

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

ORDER WR 2015 - 0040 - DWR

In the Matter of the Diversion and Use of Water by
**RICKLAND E. VICINI, ANTHONY W. VICINI, CINDY M. VICINI, MERVIN C. VICINI
AND KATHLEEN A. VICINI**

ORDER APPROVING CONDITIONAL SETTLEMENT

BY THE ASSISTANT DEPUTY DIRECTOR FOR WATER RIGHTS¹

The State Water Resources Control Board issued the attached Administrative Civil Liability Complaint (Complaint) on October 13, 2015. On October 21, 2015, Rickland E. Vicini, Mervin C. Vicini, Kathleen A. Vicini and Anthony W. Vicini (collectively Vicini) signed and submitted the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Conditional Settlement, attached as Exhibit A to the Complaint), and submitted the specified administrative civil liability (\$10,000). In doing so, Vicini requested a 30-day extension, to December 2, 2015, for submittal of the Statements of Water Diversion and a Use and Operation Plan.

The circumstances here support accepting the Conditional Settlement with the requested 30-day extension to comply with the terms of the Cease and Desist Order. Vicini has retained an established water rights consulting firm to prepare Initial Statements of Water Diversion and Use and Operation Plan for multiple unlicensed reservoirs on the property, and the time extension is reasonable to allow the consultants to become familiar with the property. Moreover, Vicini paid the specified administrative civil liability well ahead of the time required in the Conditional Settlement Offer.

¹ State Water Board Resolution No. 2012 - 0029 delegates to the Deputy Director for Water Rights the authority to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested. This authority has been redelegated to the Assistant Deputy Director for Water Rights.

I hereby approve the attached Conditional Settlement pursuant to my delegated authority. This approval includes a 30-day extension until December 2, 2015, for Vicini to submit the required Statements of Water Diversion and Use and Operation Plan(s). All other conditions set forth in the draft CDO and conditional settlement are applicable. This approval shall not limit the authority of the Executive Director or the Deputy Director for Water Rights, as delegated, to initiate enforcement action for any violations not specified in the Complaint, or for violation of the terms of the Conditional Settlement.

This order constitutes a cease and desist order for purposes of Division 2, Part 2, chapter 12 -of the Water Code (commencing with section 1825). Violations of this Settlement Agreement and order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Board. Upon the failure of any person or entity to comply with a cease and desist order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General 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. (Wat. Code, §1845, subd.(a).)

Section 1845, subdivision (b) of the Water Code provides:

(1) A person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following:

- (A) If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, ten thousand dollars (\$ 10,000) for each day in which the violation occurs.
- (B) If the violation is not described by subparagraph (A), one thousand dollars (\$ 1 ,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

STATE WATER RESOURCES CONTROL BOARD



John O'Hagan
Assistant Deputy Director for Water Rights

Dated: **NOV 03 2015**

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 by

**Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and
Kathleen A. Vicini**

SOURCES: Unnamed Streams Tributary to Dry Creek, thence Mokelumne River, thence San Joaquin River, and Unnamed Streams Tributary to Willow Creek, thence Consumnes River, thence Mokelumne River, thence San Joaquin River

COUNTY: Amador

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and Kathleen A. Vicini (collectively Vicini) are alleged to have diverted and used water in violation of California Water Code section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code 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 the diverter's rights. Water Code section 1052, subdivision (d)(2), provides that the civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board) pursuant to Water Code section 1055.
3. Vicini is also alleged to have diverted and used water in violation of Water Code sections 5100-5107, by failing to file Statements of Water Diversion and Use (Statements) with the State Water Board, Division of Water Rights (Division). Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream or a subterranean stream flowing through a known and definite channel (with a few limited exceptions), to file a Statement.
4. California Water Code section 5107, subdivision (c)(1) provides that the State Water Board may administratively impose civil liability in the amount of \$1,000 for the failure to file a Statement, 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 State Water Board may issue a complaint to any person or entity on whom 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

Vicini Water Rights

6. Vicini collectively owns seven contiguous parcels in Plymouth, California; with four of the parcels held under the ownership of Rickland E. Vicini and Anthony W. Vicini, two of the parcels held under the ownership of Rickland E. and Cindy M. Vicini, and one parcel held under the ownership of Mervin C. Vicini and Kathleen A. Vicini.
7. Water right License 11980 (A025532) was originally issued to Frank Vicini on April 16, 1986, and has a priority date of October 18, 1977. License 11980 authorizes the diversion to storage in an onstream reservoir (Licensed Reservoir) of 45 acre-feet to be collected from an Unnamed Stream tributary to Dry Creek from October 1 of each year to April 30 of the succeeding year. License 11980 authorizes a maximum withdrawal of 37 acre-feet per year from the Licensed Reservoir for the purposes of irrigation, stockwatering and recreational uses.
8. License 11980 is currently held under the ownership of Rickland Vicini and Tony Vicini. Frank Vicini is listed as the agent of record but not an owner. The Licensed Reservoir is located on Amador County APN 008-130-010-000, owned by Rickland E. Vicini and Anthony W. Vicini, and the authorized place of use for the license is within the same parcel and within Amador County APN 008-120-088-000, owned by Rickland E. Vicini and Cindy M. Vicini. Vicini does not hold or claim any other appropriative or riparian water rights on record with the Division.

Drought Actions

9. 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.
10. Also on January 17, 2014, the State Water Board issued a "Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions" (2014 Shortage Notice). The 2014 Shortage Notice alerts water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
11. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
12. On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right" (2014 Unavailability Notice), which notified all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions.
13. On October 31, 2014, the State Water Board issued a "Notice of Temporary Opportunity to Divert Water under Previously Curtailed Water Rights for Sacramento and San Joaquin River Watershed." The State Water Board temporarily lifted the curtailment of water rights for post-1914 water rights holders in the Sacramento-San Joaquin watershed and continued the opportunity to divert until 7 AM on November 3, 2014. The temporary lifting of the curtailment

was based upon a predicted rain event and did not apply to any diversions without authorization of a legitimate water right.

14. On November 19, 2014, the State Water Board temporarily lifted the curtailment of post-1953 water rights in the Sacramento-San Joaquin watershed. The temporary lifting did not apply to unauthorized diversions and the State Water Board did not issue any further notice of water unavailability for 2014.
15. On January 23, 2015, the State Water Board issued a "Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015" (2015 Shortage Notice). The 2015 Shortage Notice alerted water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
16. 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, 2015, 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.
17. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with Post-1914 Appropriative Rights" (April 23 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the San Joaquin River watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions.
18. On July 15, 2015, the State Water Board issued a clarification to the Unavailability Notices indicating that, to the extent that any of the notices described above contain language that may be construed as an order requiring water right holders to curtail diversions under affected water rights, that language has been rescinded. Similarly, any language requiring affected water right holders to submit curtailment certification forms has been rescinded. However, for purposes of noticing water rights holder of the unavailability of water for their priority of right, the Unavailability Notices remain in effect.

Investigation

19. On May 27, 2015, Division staff, accompanied by Mervin, Kathleen and Tyler Vicini, conducted an on-site inspection of Vicini's property located at 6980 Highway 16, Plymouth, California, to assess compliance with the April 23, 2015 Unavailability Notice. The contiguous property is comprised of seven parcels, with four of the parcels held under the ownership of Rickland E. Vicini and Anthony W. Vicini, two of the parcels held under the ownership of Rickland E. Vicini and Cindy M. Vicini, and one parcel held under the ownership of Mervin C. Vicini and Kathleen A. Vicini. The property contains the Licensed Reservoir authorized under License 11980, which was the subject of the on-site inspection. Based on statements made by Vicini during the inspection, and supported by Google Earth date-stamped aerial imagery, Division staff did not find evidence that Vicini collected water to storage in the Licensed Reservoir at any time during the time periods identified in the notices of unavailability of water for post-1914 water rights.

20. During the inspection, Division staff identified six unlicensed reservoirs on Vicini's property, five of which were determined to be within the permitting authority of the State Water Board (hereinafter "Unauthorized Reservoirs"). The Unauthorized Reservoirs seasonally store water collected in the fall and winter months for stockwatering use during spring and summer months. Also, based on aerial imagery, Division staff found evidence that the Unauthorized Reservoirs collected water to storage subsequent to the Governor's drought proclamation. The evidence supported that the collection of water occurred outside the time periods identified in the notices of unavailability of water.
21. Reservoir 1 is located within APN 008-120-089-000, owned by Rickland E. Vicini and Anthony W. Vicini. When full, Reservoir 1 is estimated to have a surface area of 0.14 acres, a maximum depth of 4 feet, and a capacity of 0.34 acre-foot. Reservoir 1 is located off stream and fills directly from a diversion ditch; however staff was unable to determine whether the source of the ditch was diffused surface flow or stream flow from a natural channel. Therefore, collection to storage in Reservoir 1 was not considered to be within the permitting authority of the State Water Board and not considered when assessing potential administrative civil liabilities.
22. Reservoir 2 is located within APN 008-150-020-000, owned by Rickland E. Vicini and Anthony W. Vicini. It is onstream to an unnamed tributary of Dry Creek. When full, Reservoir 2 is estimated to have a surface area of 0.1 acre, a maximum depth of 7 feet, and a capacity of 0.42 acre-foot. Based on Google Earth and Historic Aerials date-stamped aerial imagery, this reservoir is estimated to have gone from being completely empty to near full in each of the last two years (i.e. filled twice over the last two years), and has been in existence since at least 2002. Reservoir 2 has a culvert in place as a spillway, but there did not appear to be an outlet pipe to drain the reservoir, if needed.
23. Reservoir 3 is also located within APN 008-150-020-000 and onstream to an unnamed tributary of Dry Creek. When full, Reservoir 3 is estimated to have a surface area of 0.07 acre, a maximum depth of 6 feet, and a capacity of 0.25 acre-foot. Based on date-stamped aerial imagery, this reservoir is estimated to have gone from being completely empty to near full, then drawn-down to about half-full and refilled again (i.e. filled a total of 1.5 times) over the last two years, and has been in existence since at least 1998. Reservoir 3 has a spillway channel, but there did not appear to be an outlet pipe to drain the reservoir, if needed.
24. Reservoir 4 is located within APN 008-150-019-000 owned by Mervin C. Vicini and Kathleen A. Vicini. It is onstream to an unnamed tributary of Dry Creek. When full, Reservoir 4 is estimated to have a surface area of .33 acre, a maximum depth of 8 feet, and a capacity of 1.58 acre-feet. Based on date-stamped aerial imagery, this reservoir is estimated to have gone from being almost empty to near full, then drawn-down to about one quarter full and refilled again (i.e. filled a total of 1.75 times) over the last two years, and has been in existence since at least 1998. Reservoir 4 has a spillway channel, and there appears to be an outlet pipe to drain the reservoir, if needed.
25. Reservoir 5 is located within APN 008-120-088-000, owned by Rickland E. Vicini and Cindy M. Vicini. It is onstream to an unnamed tributary of Willow Creek. When full, Reservoir 5 is estimated to have a surface area of 3.6 acres, a maximum depth of 12 feet, and a capacity of 25.92 acre-feet. Based on date-stamped aerial imagery, and evaporation rates for the area, this reservoir drew-down approximately 6.5 acre-feet and then refilled each of the last two years (i.e. filled a total of half of its capacity over the last two years), and has been in existence since at least 1940-1946 and filled completely by 1959. It is unclear if the reservoir has an outlet pipe to drain the reservoir, if needed. Division staff were not allowed to take photos of Reservoir 5 and surrounding areas.
26. Reservoir 6 is also located within APN 008-120-088-000 and onstream to an unnamed tributary of Willow Creek. When full, Reservoir 6 is estimated to have a surface area of 0.12 acre, a maximum depth of 6 feet, and a capacity of 0.43 acre-foot. Based on date-stamped aerial

imagery, this reservoir is estimated to have gone from being completely empty to near full each of the last two years (i.e. filled twice over the last two years) and has been in existence since at least 1998. Reservoir 6 does not appear to have an outlet pipe to drain the reservoir, if needed.

27. The Unauthorized Reservoirs can be identified using aerial imagery from 1940 (Reservoir 5), 1998 (Reservoir 3, Reservoir 4, and Reservoir 6), and 2002 (Reservoir 2), which document that the diversions have been in place for at least thirteen years, including the period of time that the Governor declared a State of Emergency due to severe drought conditions in California (Proclamation, 1-17-2014). Division staff estimates that the five Unauthorized Reservoirs combined have illegally collected an estimated 17.9 acre-foot of water to storage within the last two years, since the State of Emergency proclamation.
28. The Unavailability Notices of May 27, 2014 and April 23, 2015 apply to License 11980, which is owned by Vicini. These notices clearly advised Vicini of the unavailability of water to supply diversions under water right permits and licenses caused by severe drought conditions, and by extension, the injury that unauthorized diversions would cause legitimate water right holders.

PROPOSED CIVIL LIABILITY

29. The basis of this complaint is the unauthorized diversion to storage, and use of water by Vicini during the Governor's declared State of Emergency due to severe drought conditions in California (Proclamation 1-17-2014). The unauthorized diversion and use of water constitutes a trespass subject to liability under California Water Code section 1052.
30. Evidence demonstrates that the Unauthorized Reservoirs, under the property ownership of Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and Kathleen A. Vicini have been in existence and collecting water to seasonal storage from unnamed tributaries of Dry Creek and Willow Creek since at least 2002. Although the State Water Board could consider a longer period of violation, due to the non-consumptive use of the water and the extremely small capacities of four of the five reservoirs, the proposed maximum daily civil liability considers only the time period since the Governor's drought proclamation and considers all five reservoirs to be one violation of unauthorized diversion to storage. The Unauthorized Reservoirs have diverted an estimated amount of 17.9 acre-feet and beneficially used an estimated amount of 28.6 acre-feet since Proclamation 1-17-2014. Therefore, the maximum civil liability authorized under Water Code section 1052 is \$1,000 per day for 560 days (January 17, 2014 through July 31, 2015), plus \$2,500 per acre-foot times 28.6 acre-feet, for a maximum civil liability in the amount of \$631,500.
31. 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.
32. In this case, Vicini made unauthorized diversions of water from the Mokelumne River watershed into unpermitted reservoirs. These diversions occurred both prior to and during the current severe drought, when there was insufficient water supply available for permitted water rights. Vicini was aware that the collection of water to seasonal storage requires a water right permit from the State Water Board. Vicini was also aware that the State Water Board had determined that there was insufficient water supply available for permitted and licensed water rights. These unauthorized diversions have reduced the amount of water available for downstream water right holders during an extreme drought emergency. Moreover, Vicini's diversions likely reduced the water available for instream resources and riparian habitat downstream.

33. Vicini received a significant economic benefit by continuing diversions during the drought period. Irrigation districts north of the Delta have paid at least \$250 per acre-foot of replacement water. Thus, by illegally diverting 9.2 acre-feet during the 2013/2014 water year and 8.7 acre-feet of water during the 2014/2015 water year, Vicini avoided purchased water costs of at least \$4,475 (17.9 acre-feet at \$250 per acre-foot).
34. Vicini also received an economic benefit from avoiding the cost of paying fees associated with maintaining and/or filing for an appropriative water right permit or license to authorize the storage of water in the five reservoirs that are within the permitting authority of the State Water Board. This benefit is estimated to be \$1,579 over the past two years.
35. In addition, Vicini failed to file Statements for the diversions and uses that occurred at each of the reservoirs after January 1, 2009. The maximum civil liability that the State Water Board can administratively impose at this time under California Water Code section 5107, subdivision (c)(1) is \$1,000 for each of the six reservoirs for which a required Statement was not filed, or \$6,000.
36. The Division estimates that its staff cost to investigate the unauthorized diversion issues and develop the enforcement documents to be \$7,154.
37. Having taken into consideration all relevant circumstances, including but not limited to, prior knowledge of the requirement to obtain an appropriative water right, the non-consumptive nature of the stockwatering use, the amount of unauthorized diversion, the harm caused by unauthorized diversion of water during the drought, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Assistant Deputy Director of Water Rights recommends the imposition of **\$23,683** in Administrative Civil Liability (Proposed Liability).

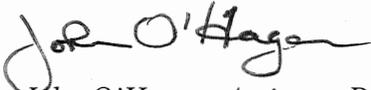
CONDITIONAL SETTLEMENT OFFER

38. To promote resolution of the alleged reporting violations, the Assistant Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). Vicini can avoid further enforcement action and settle the alleged unauthorized diversion with the terms of the Conditional Settlement Offer, provided below, as well as in the "Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration" (hereafter "Acceptance and Waiver") attached hereto as Exhibit "A".
39. The Conditional Offer requires Vicini to:
 - a. pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$10,000;
 - b. waive the right to a hearing and reconsideration of the alleged violations in this ACL Complaint and in the related and concurrently noticed CDO.
40. To accept the Conditional Offer, Vicini must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and provide the necessary information within 20 days of receipt of this complaint.
41. If there are extenuating circumstances that Vicini would like to discuss, such as an inability to pay the Expedited Payment Amount, then you can contact the Division with that information as soon as possible but no later than 20 days from receipt of this complaint.

RIGHT TO HEARING

42. Vicini may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (Water Code, sec. 1055, subd. (b).)
43. If Vicini requests a hearing, Vicini 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, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date. The State Water Board may convene a settlement conference prior to noticing a hearing date.
44. If Vicini 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 Water Code and/or responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
45. If Vicini does not remit the Acceptance and Waiver, the Expedited Payment Amount, and electronically file the necessary information, or request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: **OCT 13 2015**

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

DIVISION OF WATER RIGHTS
ORDER WR 2015-00XX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion by

**Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and
Kathleen A. Vicini**

SOURCES: Unnamed Streams Tributary to Dry Creek, thence Mokelumne River, thence San Joaquin River, and Unnamed Streams Tributary to Willow Creek, thence Consumnes River, thence Mokelumne River, thence San Joaquin River

COUNTY: Amador County

Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and Kathleen A. Vicini (collectively Vicini) are violating or are threatening to violate California Water Code section 1052, which prohibits the unauthorized diversion or use of water. Water Code section 1831 authorizes the State Water Resources Control Board (State Water Board or Board) to issue a Cease and Desist Order (CDO) requiring Vicini to cease such violations or threatened violations.

On {Date}, and in accordance with the provisions of Water Code section 1834, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Vicini for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. State Water Board Resolution 2012-0029 authorizes the Deputy Director for Water Rights 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. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Director for Water Rights pursuant to Resolution 2012-0029.

The State Water Board, or its delegee, finds that:

VICINI WATER RIGHTS

1. Vicini own seven contiguous parcels in Plymouth, California; with four of the parcels held under the ownership of Rickland E. Vicini and Anthony W. Vicini, two of the parcels held under the ownership of Rickland E. and Cindy M. Vicini, and one parcel held under the ownership of Mervin C. Vicini and Kathleen A. Vicini.
2. Water right License 11980 (A025532) was originally issued to Frank Vicini on April 16, 1986, and has a priority date of October 18, 1977. License 11980 authorizes the diversion to storage in an onstream reservoir (Licensed Reservoir) of 45 acre-feet to be collected from an Unnamed Stream tributary to Dry Creek from October 1 of each year to April 30 of the succeeding year. License 11980 authorizes a maximum withdrawal of 37 acre-feet per year from the Licensed Reservoir for the purposes of irrigation, stockwatering and recreational uses.

3. License 11980 is currently held under the ownership of Rickland Vicini and Tony Vicini. Frank Vicini is listed as the agent of record but not an owner. The Licensed Reservoir is located on Amador County APN 008-130-010-000, owned by Rickland E. Vicini and Anthony W. Vicini, and the authorized place of use for the license is within the same parcel and within Amador County APN 008-120-088-000, owned by Rickland E. Vicini and Cindy M. Vicini. Vicini does not hold or claim any other appropriative or riparian water rights on record with the Division.

DROUGHT ACTIONS

4. 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.
5. Also on January 17, 2014, the State Water Board issued a "Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions" (2014 Shortage Notice). The 2014 Shortage Notice alerts water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
6. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
7. On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right" (2014 Unavailability Notice), which notified all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions.
8. On October 31, 2014, the State Water Board issued a "Notice of Temporary Opportunity to Divert Water under Previously Curtailed Water Rights for Sacramento and San Joaquin River Watershed." The State Water Board temporarily lifted the curtailment of water rights for post-1914 water rights holders in the Sacramento-San Joaquin watershed and continued the opportunity to divert until 7 AM on November 3, 2014. The temporary lifting of the curtailment was based upon a predicted rain event and did not apply to any diversions without authorization of a legitimate water right.
9. On November 19, 2014, the State Water Board temporarily lifted the curtailment of post-1953 water rights in the Sacramento-San Joaquin watershed. The temporary lifting did not apply to unauthorized diversions and the State Water Board did not issue any further notice of water unavailability for 2014.
10. On January 23, 2015, the State Water Board issued a "Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015" (2015 Shortage Notice). The 2015 Shortage Notice alerted water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
11. 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, 2015, 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.

12. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with Post-1914 Appropriative Rights" (April 23 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the San Joaquin River watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions.
13. On July 15, 2015, the State Water Board issued a clarification to the Unavailability Notices indicating that, to the extent that any of the notices described above contain language that may be construed as an order requiring water right holders to curtail diversions under affected water rights, that language has been rescinded. Similarly, any language requiring affected water right holders to submit curtailment certification forms has been rescinded. However, for purposes of noticing water rights holder of the unavailability of water for their priority of right, the Unavailability Notices remain in effect.

INVESTIGATION

14. On May 27, 2015, Division staff, accompanied by Mervin, Kathleen and Tyler Vicini, conducted an on-site inspection of Vicini's property located at 6980 Highway 16, Plymouth, California, to assess compliance with the April 23, 2015 Unavailability Notice. The contiguous property is comprised of seven parcels, with four of the parcels held under the ownership of Rickland E. Vicini and Anthony W. Vicini, two of the parcels held under the ownership of Rickland E. Vicini and Cindy M. Vicini, and one parcel held under the ownership of Mervin C. Vicini and Kathleen A. Vicini. The property contains the Licensed Reservoir authorized under License 11980, which was the subject of the on-site inspection. Based on statements made by Vicini during the inspection, and supported by Google Earth date-stamped aerial imagery, Division staff did not find evidence that Vicini collected water to storage in the Licensed Reservoir at any time during the time periods identified in the notices of unavailability of water for post-1914 water rights.
15. During the inspection, Division staff identified six unlicensed reservoirs on Vicini's property, five of which were determined to be within the permitting authority of the State Water Board (hereinafter "Unauthorized Reservoirs"). The Unauthorized Reservoirs seasonally store water collected in the fall and winter months for stockwatering use during spring and summer months. Also, based on aerial imagery, Division staff found evidence that the Unauthorized Reservoirs collected water to storage subsequent to the Governor's drought proclamation. The evidence supported that the collection of water occurred outside the time periods identified in the notices of unavailability of water.
16. Reservoir 1 is located within APN 008-120-089-000 owned by Rickland E. Vicini and Anthony W. Vicini. When full, Reservoir 1 is estimated to have a surface area of 0.14 acre, a maximum depth of 4 feet, and a capacity of 0.34 acre-foot. Reservoir 1 is located off stream and fills directly from a diversion ditch; however staff was unable to determine whether the source of the ditch was diffused surface flow or stream flow from a natural channel. Therefore, collection to storage in Reservoir 1 was not considered to be within the permitting authority of the State Water Board.
17. Reservoir 2 is located within APN 008-150-020-000 owned by Rickland E. Vicini and Anthony W. Vicini. It is onstream to an unnamed tributary of Dry Creek. When full, Reservoir 2 is estimated to have a surface area of 0.1 acre, a maximum depth of 7 feet, and a capacity of 0.42 acre-foot. Based on Google Earth and Historic Aerials date-stamped aerial imagery, this reservoir is estimated to have gone from being completely empty to near full in each of the last two years (i.e. filled twice over the last two years), and has been in existence since at least

2002. Reservoir 2 has a culvert in place as a spillway, but there did not appear to be an outlet pipe to drain the reservoir, if needed.
18. Reservoir 3 is also located within APN 008-150-020-000 and onstream to an unnamed tributary of Dry Creek. When full, Reservoir 3 is estimated to have a surface area of 0.07 acre, a maximum depth of 6 feet, and a capacity of 0.25 acre-foot. Based on date-stamped aerial imagery, this reservoir is estimated to have gone from being completely empty to near full, then drawn-down to about half-full and refilled again (i.e. filled a total of 1.5 times) over the last two years, and has been in existence since at least 1998. Reservoir 3 has a spillway channel, but there did not appear to be an outlet pipe to drain the reservoir, if needed.
 19. Reservoir 4 is located within APN 008-150-019-000 owned by Mervin C. Vicini and Kathleen A. Vicini. It is onstream to an unnamed tributary of Dry Creek. When full, Reservoir 4 is estimated to have a surface area of .33 acre, a maximum depth of 8 feet, and a capacity of 1.58 acre-feet. Based on date-stamped aerial imagery, this reservoir is estimated to have gone from being almost empty to near full, then drawn-down to about one quarter full and refilled again (i.e. filled a total of 1.75 times) over the last two years, and has been in existence since at least 1998. Reservoir 4 has a spillway channel, and there appears to be an outlet pipe to drain the reservoir, if needed.
 20. Reservoir 5 is located within APN 008-120-088-000 owned by Rickland E. Vicini and Cindy M. Vicini. It is onstream to an unnamed tributary of Willow Creek. When full, Reservoir 5 is estimated to have a surface area of 3.6 acres, a maximum depth of 12 feet, and a capacity of 25.92 acre-feet. Based on date-stamped aerial imagery, and evaporation rates for the area, this reservoir drew-down approximately 6.5 acre-feet and then refilled each of the last two years (i.e. filled a total of half of its capacity over the last two years), and has been in existence since at least 1940-1946 and filled completely by 1959. It is unclear if the reservoir has an outlet pipe to drain the reservoir, if needed. Division staff was not allowed to take photos of Reservoir 5 and surrounding areas.
 21. Reservoir 6 is also located within APN 008-120-088-000 and onstream to an unnamed tributary of Willow Creek. When full, Reservoir 6 is estimated to have a surface area of 0.12 acre, a maximum depth of 6 feet, and a capacity of 0.43 acre-foot. Based on date-stamped aerial imagery, this reservoir is estimated to have gone from being completely empty to near full each of the last two years (i.e. filled twice over the last two years) and has been in existence since at least 1998. Reservoir 6 does not appear to have an outlet pipe to drain the reservoir, if needed.
 22. The Unauthorized Reservoirs can be identified using aerial imagery from 1940 (Reservoir 5), 1998 (Reservoir 3, Reservoir 4, and Reservoir 6), and 2002 (Reservoir 2), which document that the diversions have been in place for at least thirteen years, including the period of time that the Governor declared a State of Emergency due to severe drought conditions in California (Proclamation, 1-17-2014). Division staff estimates that the five Unauthorized Reservoirs combined have illegally collected an estimated 17.9 acre-feet of water to storage within the last two years, and since the State of Emergency proclamation.
 23. The Unavailability Notices of May 27, 2014 and April 23, 2015 apply to License 11980, which is owned by Vicini. These notices clearly advised Vicini of the unavailability of water to supply diversions under water right permits and licenses caused by severe drought conditions, and by extension, the injury that unauthorized diversions would cause legitimate water right holders.
 24. Water Code section 1052, subdivision (a) provides that "the diversion or use of water subject to this division other than as authorized in this division is a trespass." The circumstances described above indicate that Vicini is violating, or is threatening to violate, the prohibition set forth in Section 1052 against the unauthorized diversion or use of water. Thus, Vicini may be subject to a CDO pursuant to Water Code section 1831, subdivision (d) (1).

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Vicini immediately cease and desist the unauthorized diversions and threatened unauthorized diversions of water from the Unnamed Streams tributary to Dry Creek and Willow Creek, and within 20 days from the date of this order file an initial Statement of Water Diversion and Use for each of the Unauthorized Reservoirs, and provide a plan to the State Water Board either for:

- a. Rendering the Unauthorized Reservoirs permanently incapable of storing water; or
- b. Operating the Unauthorized Reservoirs without storing water subject to the State Water Board's permitting authority until and unless a permit(s) or registration(s) authorizing the storage of such water is obtained from the State Water Board.

Within 180 days of approval of the plan, Vicini shall provide evidence to the State Water Board that the Unauthorized Reservoirs no longer store water subject to the State Water Board's permitting authority, or that the unauthorized reservoirs have been modified or equipped with outlet works to prevent unauthorized storage while appropriative rights to store such water are being pursued.

Consequences of Non-Compliance

In the event Vicini fails to comply with the requirements of the Order, Vicini shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845. Violation of a CDO issued during a period for which the Governor has issued a proclamation of a 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, 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.

Compliance with Future Directives of Division

Vicini shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding any corrective action until such time as the State Water Board issues water right permits, if necessary or the reservoirs are rendered incapable of storing water subject to the State Water Board's permitting authority.

Nothing in this 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 Vicini for unauthorized diversion and use of water in violation of Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse Vicini 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 the Vicini from meeting any additional regulatory requirement that may be imposed by other local, state, or federal regulatory entities for corrective actions taken by Vicini 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:

DRAFT

EXHIBIT A

ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION

**Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and
Kathleen A. Vicini**

Source: Unnamed Streams Tributary to Dry Creek, thence Mokelumne River, thence San Joaquin River, and Unnamed Streams Tributary to Willow Creek, thence Consumnes River, thence Mokelumne River, thence San Joaquin River

County: Amador

By signing below and returning this Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) to the State Water Resources Control Board (State Water Board), Rickland E. Vicini, Anthony W. Vicini, Cindy M. Vicini, Mervin C. Vicini and Kathleen A. Vicini (collectively Vicini) hereby accepts the State Water Board's conditional settlement offer (Conditional Offer) and waives the right to a hearing before and reconsideration by the State Water Board at which violations alleged in the Administrative Civil Liability Complaint issued to Vicini (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Vicini agrees to perform the following within 20 days of receipt of the ACL Complaint:

- **Pay administrative civil liability as authorized by California Water Code section 5107, subdivision (c) in the amount of \$10,000** by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into the Water Rights Fund, which shall be deemed payment in full of any civil liability pursuant to California Water Code section 5107 (c) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Accept the terms and conditions outlined in the related and concurrently noticed Cease and Desist Order (CDO)**

Vicini understands that this Acceptance and Waiver waives the Vicini's right to contest the allegations in the draft CDO and ACL Complaint and the civil liability amount proposed for those violations.

Vicini understands that the failure to submit payment of the Expedited Payment Amount, electronic copies of the necessary Supplemental Statements as identified and described above, along with the signed Acceptance and Waiver within 20 days of receipt of this notice shall render the State Water Board's Conditional Offer void. If the State Water Board's Conditional Offer is deemed void due to Vicini's non-performance, then the State Water Board will issue a final ACL Order and CDO, and seek recovery of the full liability amount proposed in the ACL Complaint.

Vicini understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint and CDO. The filing of a

L' This Acceptance is conditioned upon the State Water Board's granting of the 30-day extension for submittal of the Statements of Water Diversion and Use and operation plan.

Statement of Diversion and Use with the State Water Board does not in any way establish or constitute evidence of a right to divert or use water. (Wat. Code, § 5106, subd. (a).)

Upon execution by Vicini, the Acceptance and Waiver and Expedited Payment Amount shall be mailed to the following:

**Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Enforcement Section
P. O. Box 2000
Sacramento, CA 95812-2000
Attn: John O'Hagan**

Vicini understands that this Acceptance and Waiver is not final until it is approved by the State Water Resources Control Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

We hereby affirm that we are duly authorized to act on behalf of and to bind Vicini in the making and giving of this Acceptance and Waiver. This Acceptance and Waiver may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Please make corrections as appropriate.

By: *Rickland E. Vicini*
Rickland E. Vicini

10-20-15
Date

Rickland E. Vicini
Printed or typed name

Owner
Title

By: _____
Cindy M. Vicini

Date

Printed or typed name

Title

Divorced, unable to contact

By: Mervin C. Vicini
Mervin C. Vicini
Mervin C Vicini
Printed or typed name
Owner
Title

10-20-15
Date

By: Kathleen A. Vicini
Kathleen A. Vicini
KATHLEEN A. Vicini
Printed or typed name
Owner
Title

10-20-15
Date

By: Anthony Vicini
Anthony Vicini
Anthony W. Vicini
Printed or typed name
Owner
Title

10-20-15
Date