

WR-10

TESTIMONY OF CHARLES ARNOLD

My name is Charles Arnold. I am a Water Resource Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights. I have over nine years of experience working in the Division in the Enforcement Section. My experience with the Enforcement Unit includes inspecting permitted and licensed water right projects for compliance with terms and conditions, and inspecting potential unauthorized diversions of water and use. Duties include preparing inspection reports, reviewing compliance reports, and drafting administrative civil liabilities and cease and desist orders. A copy of my resume is attached as exhibit WR-11.

My testimony, herein provided, addresses my personal knowledge of the evidence, actions, and rationale for the Division's recommendation to issue an Administrative Civil Liability (ACL) Order and Cease and Desist Order (CDO) against Andrew Flocchini (individual and LLC).

Initial Investigation

Division staff reviewed potentially unauthorized reservoirs that were identified in an Arc GIS database using United States Geological Survey quadrangle map of Sonoma and Napa counties and National Agriculture Imagery Program orthophoto images obtained from the United States Department of Agriculture. The Arc GIS database was developed by Stetson Engineers Inc. in order to complete a report entitled "Potential Indirect Environmental Impacts of Modification or Removal of Existing Unauthorized Dams" that is included as Appendix E of the of the Substitute Environmental Document for the development of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. (WR-27.) The reservoir located on Sonoma County Assessor's Parcel Number 068-110-007 showed clear signs of water storage behind a single axis earthen dam with defined upstream and downstream channels. The quadrangle map also showed blue line streams above and below the reservoir (WR-23). The online service Parcel Quest identified "Flocchini Estate LLC" as the owner of the parcel surrounding the reservoir in question (WR-19).

Reservoir Inspection and Field Findings

I was not present during the initial investigation in 2011, but provide the following summary of the investigation conducted by former State Water Board employees Cheri Gehrt and Bridget Supple, who were granted access to the reservoir on February 7, 2011 to make observations and collect field measurements to determine if the reservoir is onstream and collecting water subject to the permitting authority of the State Water Board. Cheri Gehrt, then a special investigator with the Division, and Bridget Supple met with Andrew and Nicholas Flocchini at the property located at 7078 Lakeville Highway.

As reported by Ms. Ghert and Ms. Supple: There is an on-stream dam and reservoir with an estimated capacity of 29 acre-feet based on a reported (by owner) reservoir depth of 12 feet. Owner reported that water from the reservoir is used to irrigate an adjacent vineyard (26 acres). A nearby groundwater well was used to irrigate pasture for stock grazing. Based on verbal statements from the owner, groundwater is not used to fill the reservoir and/or irrigate the vineyard due to the reported high mineral content of the groundwater. Photos were taken of the reservoir, groundwater well tank, irrigation pumps and vineyard. Based on the fact that the vineyard demands summer/fall irrigation and inflows are intermittent, staff concluded that the reservoir is seasonally storing unauthorized diversions of water and recommended the Division should consider appropriate enforcement action. The February 7, 2011 inspection report was reviewed and approved by Ms. Gehrt and is included as exhibit WR-12.

The Field Inspection Findings for Existing Reservoir and Notice of a Requirement to File a Statement of Water Diversion and Use for Diversion of Water in Sonoma County (Findings letter) was mailed on September 20, 2011 to Andrew Flocchini (WR-13). The Findings Letter informed Mr. Flocchini that the reservoir on his property was diverting water subject to State Water Board jurisdiction and was considered an unauthorized diversion of water for which he could be subject to enforcement. Finally, the Findings Letter gave Flocchini 45 days to either: (1) provide evidence that the reservoir does not store water, or can be operated without storing water subject to the State Water Board's permitting authority; (2) remove the reservoir or render it incapable of storing water; or (3) file an application to appropriate water. The Division received an Initial Statement of Water Diversion and Use (S022317) date September 29, 2011 from Mr. Flocchini for the unauthorized reservoir. The Statement claimed irrigation of 26 acres of vineyard, but did not claim a basis of right for the reservoir (WR-14), nor did it provide the information requested in the Findings Letter or convey any intent to pursue the necessary

corrective actions as identified in the Findings Letter. However, Flocchini submitted annual electronic reports to the Division reporting winter diversions in calendar years 2011, 2012 and 2013 and summer use in years 2011 and 2012. The owner also submitted a reservoir survey map dated October 15, 2013, reporting a reservoir capacity of 13.75 acre-feet based on a maximum reservoir depth of 8.4 feet.

In order to ascertain the status of the reservoir, I visited the site on March 18, 2015 and took photos of the reservoir, dam, spillway, vineyard and the down-stream channel from points along Lakeville Highway and Old Lakeville Highway. I did not access the property. Instead, I observed and photographed the property from the public roadways (Lakeville Highway and Old Lakeville Highway). The Flocchini reservoir inlet is fed directly through a culvert from the spillway of a dam (D032167) located directly east of Old Lakeville Highway (see photos 1, 2 and 3 attached to WR-23). D032167 is a domestic registration for an approximately 9.63 acre pond located on the same source stream. The upstream channel above D032167 is identified on the USGS Quad map (WR-23, p. 5). There was no inflow or outflow but the reservoir appeared to have a substantial quantity of water contained in it. The vineyard adjacent to the reservoir to the east was still in existence. Based on my observations during the March 18, 2015, site visit, the property and reservoir appear to be in substantially the same condition as documented in the February 7, 2011, inspection report. My review of the inspection is WR-23. WR-26 contains additional photographs I took during the March 18, 2015, site visit.

Based on statements made by the Flocchini's to Division staff during the 2011 inspection, and based on annual electronic reports submitted to the Division in 2011 and 2012, the reservoir has been diverting and seasonally storing unauthorized water for vineyard irrigation.

Issuance of the ACL Complaint and Draft CDO

Based on staff's determination that the reservoir located on property owned by the Flocchini Estate LLC, for which Flocchini is the owner and on which Flocchini is farming vineyard, Flocchini is storing water subject to the permitting authority of the State Water Board. The ACL Complaint and proposed CDO were issued by the Division on March 8, 2013 (WR-1 and WR-2). The ACL Complaint explains the State Water Board's authority to issue such a complaint as defined by California Water Code, details the investigation in chronological order followed by the maximum and proposed civil liability, and concludes with details of Flocchini's right to a hearing (WR-1). The amounts listed under the proposed civil liability section were determined by Mr.

Coats based on his analysis as detailed in his testimony (WR-8). The proposed CDO provides the State Water Board's authority as defined by California Water Code to issue such an order then details the investigation in chronological order. The proposed CDO provides Flocchini with three corrective action options that can be pursued to come into compliance with the proposed CDO and California Water Code. Lastly, the proposed CDO explains the consequences of non-compliance and the State Water Board's reserved enforcement authority and discretion. The ACL Complaint and proposed CDO were sent by certified mail on March 8, 2013 to Flocchini Estate LLC (WR-1 and WR-2). The March 8, 2013 certified mail containing the enforcement documents were accepted by signature on March 14, 2013 (WR-4). Flocchini provided written response by letter dated April 4, 2013 requesting a hearing (WR-6).