

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

**DIVISION OF WATER RIGHTS**

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**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**

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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

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**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).

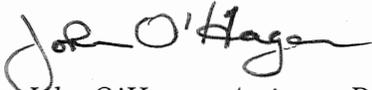
#### CONDITIONAL SETTLEMENT OFFER

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**

