

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:

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