

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0086

IN THE MATTER OF

JIM & VERA KURNOSOFF,
AS INDIVIDUALS AND IN THEIR REPRESENTATIVE CAPACITY AS TRUSTEES
FOR THE J & V REVOCABLE TRUST
FRESNO COUNTY

This Order is issued pursuant to California Water Code section 13323 to Jim & Vera Kurnosoff as individuals and in their representative capacity as trustees for the J & V Revocable Trust (collectively Dischargers) for failing to submit a Report of Waste Discharge required under Water Code section 13260.

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds the following:

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state (Wat. Code, § 13050, subd. (e)). The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state (Wat. Code, § 13263).
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area that are Members of the Third-Party Group (Order R5-2013-0120) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Fresno County, including Dischargers, which were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets

were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.

5. Evaluation of county assessor and FMMP data indicates that Dischargers own approximately 88 acres of agricultural land in Fresno County, as identified as Assessor's Parcel Numbers 020-100-32S, 020-100-33S, 020-150-11S and 020-150-12S.
6. On 21 February 2014 and 28 April 2014, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and actions available to comply with the regulations.
7. On 18 March 2015, Board staff conducted a field inspection from public roadways of Fresno County APN 020-100-33S. Board staff observed evidence of approximately 30 acres of irrigated grapevines. An additional three agricultural parcels (APNs 020-100-32S, 020-150-11S, and 020-150-12S) totaling approximately 60 acres were identified by staff using aerial imagery, for a cumulative total of 88 acres.
8. On 26 March 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Dischargers, sent via certified mail. The Directive stated that, *"You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations."* The Directive was sent based on evidence of commercial irrigated lands.
9. The Directive required Dischargers to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, Dischargers could comply by joining the Kings River Water Quality Coalition ("Coalition" or "KRWQC"), or by submitting a Report of Waste Discharge (RoWD)/Notice of Intent (NOI).
10. The Dischargers received the Directive on 28 March 2015. Dischargers did not obtain regulatory coverage by 12 April 2015 and did not contact the Board.
11. Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Dischargers on 9 July 2015.
12. Dischargers received the NOV on 10 July 2015. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.
13. On 28 September 2015, Board staff conducted a second field inspection of Fresno County parcels 020-100-32S and 020-100-33S. Staff again found a

commercial irrigated land use; however, staff observed no direct evidence of surface water discharges from the parcel (e.g., discharge pipes at borders or erosion rills leading offsite).

14. On 5 October 2015, the Prosecution Team sent the Dischargers a notification letter via certified mail that an Administrative Civil Liability Complaint in the amount of \$27,885 would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 19 October 2015.
15. Dischargers received the notification letter on 19 October 2015 and contacted the Prosecution Team via email on 21 October 2015.
16. A settlement meeting was held on 13 November 2015; however, the Prosecution Team and the Dischargers were unable to reach an agreement.
17. A second settlement meeting was held on 4 April 2016. The Prosecution Team and the Dischargers were unable to reach an agreement.
18. A third settlement meeting was held on 1 September 2016. The Prosecution Team and the Dischargers were unable to reach an agreement.

VIOLATION

19. On 25 January 2016, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0513 to the Dischargers in the proposed amount of twenty-seven thousand, eight hundred eighty-five dollars (\$27,885) for failing to submit a Report of Waste Discharge as required by Water Code section 13260.
20. On 22 June 2016, the Dischargers joined the Kings River Water Quality Coalition and submitted a Notice of Intent (NOI) to obtain coverage under the General Order.

REGULATORY CONSIDERATIONS

21. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
22. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a RoWD containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Dischargers' lands are located.
23. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
24. Water Code section 13261, subdivision (b)(1), states: Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.
25. The required RoWD is 287 days past due. The maximum liability under Water Code section 13261, subdivision (b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of two hundred and eighty-seven thousand dollars (\$287,000).
26. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

27. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.
28. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The administrative civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
29. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2013-0120 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
30. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$287,000. The Enforcement Policy requires that the minimum liability imposed be at least ten percent higher than the economic benefit of non-compliance so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Dischargers resulting from the failure to enroll under Order R5-2013-0100 is estimated at \$4,084 (see Attachment A for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$4,492).
31. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
32. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
33. In the event that the Dischargers fail to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.

34. Issuance of this Administrative Civil Liability Order is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
35. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Jim & Vera Kurnosoff, as individuals and in their representative capacity as trustees for the J & V Revocable Trust, shall be assessed an Administrative Civil Liability in the amount of twenty-seven thousand, eight hundred eighty-five dollars (\$27,885).
2. Payment shall be made no later than 30 days from the date of issuance of this Order by check payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this Order written upon it.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board on 6 December 2016.

Original signed by

PAMELA C. CREEDON, Executive Officer

Attachment A: Penalty Calculation Methodology