

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0513

ADMINISTRATIVE CIVIL LIABILITY
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 Complaint 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 (hereafter collectively Dischargers) for failing to submit a Report of Waste Discharge required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board or Board) alleges the following:

BACKGROUND

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 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 of Fresno County parcel 020-100-33S and found evidence of 30 acres of commercially irrigated grapes. An additional three parcels (020-100-32S, 020-150-11S and 020-150-12S) of grapes were found using aerial imagery indicating a total of approximately 88 acres of irrigated cropland. A copy of the inspection reports are provided as Attachment B.
8. On 26 March 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (hereafter Directive) to 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. A copy of the Directive is provided as Attachment A.
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. Dischargers received the Directive on 28 March 2015. A copy of the certified mail receipt for the Directive is included with the Directive in Attachment A. 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. A copy of the NOV is provided as Attachment C.
12. Dischargers received the NOV on 10 July 2015. A copy of the certified mail receipt for the NOV is included with the NOV in Attachment C. 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). Copies of the inspection reports that include an aerial photo of parcels 020-150-11S and 020-150-12S are provided as Attachment D.
14. On 5 October 2015, the Prosecution Team sent the Dischargers a notification letter via certified mail than 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. A copy of the letter is included as Attachment E
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. Central Valley Water Board records indicate that at the time of issuance of this Complaint, Board staff had not received a RoWD, proof of coalition membership, or a Notice of Intent from Dischargers.

ALLEGED VIOLATIONS

18. Dischargers failed to submit a Report of Waste Discharge as required by Water Code section 13260. The Water Code section 13260 Directive Letter issued to Dischargers required either submittal of a RoWD or, in lieu of submitting a RoWD, submittal of a NOI to enroll in the Coalition. As of 25 January 2016, Dischargers' RoWD or NOI is 287 days past due.

REGULATORY CONSIDERATIONS

19. 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).
20. 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.
21. 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).
22. 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.
23. 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).
24. 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.
25. 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.

26. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment F. The proposed 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.
27. 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.
28. **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 \$3,773 (see Attachment F for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$4,150).
29. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
30. Issuance of this Administrative Civil Liability Complaint 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).

DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Dischargers be assessed an administrative civil liability in the amount of **twenty seven thousand eight hundred eighty five dollars (\$27,885)**. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on

21/22 April 2016; the hearing may be delayed if the Dischargers submit a waiver (see Attachment G) and request a settlement discussion or a hearing delay.

2. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
3. The Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.

Original signed by:

Clay L. Rodgers, Assistant Executive Officer

25 January 2016

(Date)

Attachment A: 26 March 2015 California Water Code 13260 Directive

Attachment B: 18 March 2015 Inspection Reports

Attachment C: 9 July 2015 NOV for Failure to Respond to 13260 Directive

Attachment D: 28 September 2015 Inspection Reports

Attachment E: 5 October 2015 Pre-ACL Letter

Attachment F: Calculation of Penalty per SWRCB Water Quality Enforcement Policy

Attachment G: Waiver Form

Attachment H: Proposed Hearing Procedure

Attachment I: ACL Fact Sheet