

**Petition for Review with the State Water Quality Control Board
and
Request for Reversal, Amendment or Waiver of Enforcement Penalty**

January 5, 2017

1. Petitioner:

Jimmy and Vera Kurnosoff, Jr.
17223 w. Kearney Blvd.
Kerman, California 93630
Phone: (559)709-2928
Email: sl0tahoe87@yahoo.com

When appropriate, please contact Petitioner's attorney:

Kathleen P. Clack
Attorney at Law
6061 N. Fresno Street, Suite 101
Fresno, California 93710
Fresno Phone: 559.241.7229
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2. Petition for Review and reversal, amendment or waiver of enforcement decision on December 6, 2016 by the Central Valley Regional Water Quality Control Board ("Central Valley Board"):

On December 6, 2016, the Central Valley Board considered the Administrative Civil Liability Order against Jim and Vera Kurnosoff, as individuals and in their representative capacity as trustees for the J&V Revocable Trust, Fresno County.

After a hearing on the evidence and oral argument of both the Central Valley Board and the Petitioners, the Board ruled that it would order the payment of a Civil Liability Penalty against the Petitioners in the amount of \$27,885.

Petitioners herein appeal the Board decision on December 6, 2016 to be reversed, amended or waived although the Order has not been served on the Petitioners.

3. Statement of reasons the for the reversal, amendment or waiver of the Penalty assessed on December 6, 2016.

A. **Violation of Due Process clause of the CA Constitution**

Notice:

Petitioners have been fined for Mr. Kurnosoff's father's failure to file a report. However, there was inadequate notice of the new reporting requirements, the basis for a fine, the amount of the fine and how it was being calculated. Mr. Kurnosoff, Jr., did not get any of the prior notices that had been mailed to his father for the 287 penalty days, beginning in February 2014, until October 2015.

Mr. Kurnosoff only speaks Russian and barely reads Russian. Petitioners presented the prosecution's evidence that Central Valley staff called Mr. Kurnosoff, Sr., to discuss a report and were told by Mr. Kurnosoff, Sr., that he did not understand or read English. (See Exhibit A attached hereto) Water Board staff made site visits to the property, never stepped onto the property, and failed to knock on Mr. Kurnosoff, Sr.'s door, given the communication problems. There was no outreach in this non-English speaking defendant. (See Exhibit B attached hereto)

Further, the Water Board evidence clearly States that the irrigation of the property was indeterminate. The staff took pictures but had no idea how the land was being irrigated since it was dry. Mr. Kurnosoff, Jr., told them that it was because he wells dried up. However, during the hearing, Water Board staff used their Slide #11 to show that there was irrigation on the land, to show Mr. Kurnosoff was untruthful. However, there was one 5 x 2 foot wide spot of dark soil among many rows of vines all in monotone grey, indicating the lack of irrigation. Absent any proof of full irrigation, Water Board Staff presented a previously unseen photograph of the entire acreage with a larger dark area many yards apart from the small spot. Concluding without any science that this other dark area was evidence of irrigation, the Water Board at the hearing accepted it as evidence of irrigation. There are a number of reasons why there was a dark area, other than regular, extensive irrigation, such as rain, testing of the new wells, but nothing to explain why the entire parcel of vineyard was not all wet for the purpose of irrigation. This is also evidence of the Water Board's prejudice against this Petitioner. (Petitioner does not have a copy of the slide showing the areal photograph of the entire parcel. It would be in the District file.)

No weight was given to Petitioner's interpretation of the evidence.

When Mr. Kurnosoff, Jr., finally was able to respond to the contact received in October 2015, he wrote an email stating that he had reviewed their letters, which the Water Board staff strictly construed at the hearing in December 2016 as an admission of "notice". However, it was the contact made by the Water Board in October that caused Mr. Kurnosoff, Jr., to try and find something that might have been in his father's possession. This is a farmer who was then unrepresented by counsel. Had he been able to testify, he would have explained the context in which the words were written. The addressees identified on the Water Board letters speak for themselves.

Mr. Kurnosoff, Jr., farms and is employed by Mr. Kurnosoff, Sr., but does not receive his mail. In October 2015, Mr. Kurnosoff was sent a letter about reporting having heard nothing about the entire process, not being the owner of the land. In October, the Water Board found the trust information contained in their prosecution. However, this is a revocable trust, with control over the land remaining in Mr. Kurnosoff, Sr. The issue of penalty against the wrong parties was raised at the hearing and shouted down. However, the party now responsible for the penalty does

not control the land. The property has not been turned over by the Father, who remains in control.

Mr. Kurnosoff, Jr., disagreed with the local staff about the amount of the penalty being assessed in view of the Stated policy of the Board that, "there would be no interest or late payment fees". (See Waste Discharge Requirement (WDR) Fees, Frequently asked Questions (FAQs) Question #9, 10/30?2004) He was operating with the understanding found the 2004 publication on the Internet, thinking that while he was objecting to the penalty he would not be held liable, until resolution.

Probate Code § 18001 States that "A trustee is a person labile for obligations arigins from ownership or control of trust property, only if the trustee is personally at fault." Mr. Kurnosoff, Jr., did not fail to act; he disagreed with the assessment of the fine based on the Stated policy of the Board. He did, however, cause the vineyards to join the Coalition nonetheless. There was no intent not to abide by the Water Board Order.

The employee of the Kurnosoff land is being assessed the penalty for that which the owner of the property did not respond.

During the presentation of evidence for Petitioners, Water Board staff took a position at the table before Petitioners' testimony began, and during Petitioners' counsel's presentation of their case, in effect prejudicing the Board members and taking "aim" in readiness for objection to Petitioners' testimony. Unusually, for the hearing on that day, Water Board counsel, initiated numerous objections and cross examination of Petitioners' counsel during her presentation, interrupting the presentation with prejudicial commentary and abuse of the process. Though this is process is identified as a "prosecution", the trial standards adopted during the Kurnosoff presentation did not meet the due process accorded trial counsel. Rather it was weighted in favor of abuse of presentation and evidence.

Prior testimony that day of the hearing did not include such objection and interruption of the process.

Prejudicial predetermination by the board before the introduction of evidence by Petitioners

As is Stated in the audio/visual recordation of the hearing, the Chairman of the Board demonstrated his pre-disposition to punish these particular petitioners to make an example for all farmers. To wit, ""...we are concerned about people who don't enroll...[who] have made a decision not to enroll...and I think that's what we have here." Mr. Kurnosoff, Jr., had actually enrolled, prior to the hearing by about 6 months, demonstrating that the Chariman had decided that these Petitioners were guilty for the Board to make an example. Staff, Clay Rogers, made the same Statement, "[staff assesses] a penalty appropriate that sends an important message that, A., your made a mistake, and B., [for] deterrence to other dischargers." Again, the Kurnosoff farms suffered from the loss of their water wells, which irrigation was not proven at the hearing.

B. Violation of Petitioners' right to equal protection under the law of the CA Constitution

Petitioners have the right to be treated similarly to other farmers who are similarly situated. On the Agenda at the December 6, 2016 hearing, Agenda Item 17, Joe Silveira, preceded the Kurnosoff matter. When assessing the Selveira penalty, the Board acted differently than with the Kurnosoff case. The Board asked Mr. Silveira if anyone followed up with a visit to Mr. Silveira's property after not hearing from Mr. Silveira about reporting and joining a coalition. Unlike Kurnosoff, the Board Stated in its oral discussion after Petitioners' presentation, that it had, "no duty to contact the dischargers." The Board did not State that it was making an example of Mr. Selveira and reduced his penalty over \$30,000, without making Statements that they would, "be watching [Mr. Kurnosoff] your client for further reporting violations." No one from the Board positioned him/herself for objections during the Silveira testimony. No one interrupted Mr. Silveira during his testimony. Instead the Board was empathetic and reduced his penalty.

This Board had pre-determined its position and prosecution of the Petitioners before any evidence was introduced on their behalf. The hearing was prejudicial, hostile and drew conclusions in favor of the Central Valley Board that were vague, indeterminate and misrepresented. The prosecution is discretionary, without specific standards for the determination on who to prosecute one farmer more heavily than another.

These Petitioners could not appear, but were pressured to do so through counsel by the Central Valley Board, who showed no empathy for Mr. Kurnosoff's bad health, and whose wife was with him at his bedside. This is a prosecution for reporting requirements, not contamination or misuse of the waters of the State. The Central Valley Staff used its position in connection with the sitting Board members at the hearing to make Petitioners to appear at fault without recognizing the efforts by Petitioners, the lack of adequate notice to Petitioners, the wrong prosecution of the employee of the controlling owner of the property at issue.

The entire Board maintained a hostile position against the Petitioners based on a predetermined and coordinated effort to concur with Central Valley Staff who wanted to fine Petitioners for more.

Petitioners hereby requests an amendment to the Order reducing or eliminating the penalty unfairly assessed with bias against these Petitioners.

5. How the Petitioner is aggrieved:

The amount of the Penalty assessed against this small farmer of Acres, is overly burdensome and excessive compared with the crime for which the Petitioners are being held liable.

Like many farmers throughout the State of California during the recent drought years, Petitioners suffered from the loss of water wells. He is currently facing foreclosure because the current raisin crop has not yet been paid by the packer, combined with the loss of production suffered during the drought years. Petitioners could not appear at the hearing on December 6, 2016, because of serious illness that resulted in surgery approximately a week after the hearing. Hoping to satisfy the Central Valley Board which had exerted excessive pressure to appear despite his illness, Petitioners were unable to testify as to the loss of their water wells. However,

members and staff of the Central Valley Board had been to the property and seen the new wells that had replaced the old wells and that well that was still not producing.

This penalty is unreasonably punitive in nature, under impossible circumstances for Petitioners, currently facing the loss of their land after 55+ years. The amount of the fine is exorbitant for the amount of acreage, involved, for failing to file a report. The penalty is not for contamination of the waters of the State, it is only about a reporting requirement. Though Petitioner has cooperated with the Central Valley Board by joining the Kings River Coalition, Petitioners have disagreed with the amount of the penalty.

The fine calculation is based on economically unsound practices. First, the ability of the farmer to pay is based on the assessed value of the land on the tax roles. This does not mean he has disposable cash with which to pay a fine. As the State knows, farmers encumber their land heavily annually, especially in a drought. Surely the State does not seek the sale of land in order to pay reporting fines.

Secondly, the Water Board admits to using the Fresno County Raisin Crop report to determine ability to pay, but does not include the specific production of a given piece of land in assessing ability to pay. Thus, if a single farm had a bad year, it would not specifically appear in the Fresno County Raisin Crop report.

Petitioners are unable to pay the fine.

Respectfully submitted,

A handwritten signature in black ink that reads "Kathleen P. Clack". The signature is written in a cursive, flowing style.

Kathleen P. Clack
Counsel for Petitioners

EXHIBIT A

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Inspection Report

Ownership Information:

Owner(s):	JIM KURNOSOFF TRUSTEE	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-100-32S	Acres:	30	County:	Fresno

Inspection Findings:

Date Inspected:	9/28/2015
Inspected By:	PAB/EEW
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Furrow
Other/Notes:	Parcel does not appear to drain. Low potential to discharge.

Inspection Photo:



CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Inspection Report

Ownership Information:

Owner(s):	JIM & VERA KURNOSOFF TRUSTEES	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-100-33S	Acres:	30	County:	Fresno

Inspection Findings:

Date Inspected:	9/28/2015
Inspected By:	PAB/EEW
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Furrow
Other/Notes:	Parcel does not appear to drain. Low potential to discharge.

Inspection Photo:



CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Inspection Report

Ownership Information:

Owner(s):	JIM & VERA KURNOSOFF TRUS-TEES	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-150-11S, 020-150-12S	Acres:	30	County:	Fresno

Inspection Findings:

Date Inspected:	9/28/2015
Inspected By:	PAB/EEW
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Unknown
Other/Notes:	Inaccessible. Aerial imagery shows irrigated agriculture but irrigation method unknown. Could not determine potential to discharge from aerial imagery.

Inspection Photo:

The screenshot shows the PARCELOQUEST web application interface. At the top, there is a search bar and navigation options like 'Parcel / Export' and 'Reset'. Below the search bar is a 'Find My Parcels' section. On the left, there is a 'Help Tools' sidebar with options: View, Layers, Go To, Duller & Shapes, and Legend. The main area displays an aerial satellite image of agricultural land with several parcels outlined. At the bottom, there is a 'Results' table with columns for Co, APR, Owner, Lot Acres, M Street Address, M City State Zip, and Owner 2. The table lists two parcels owned by KURNOSOFF JIM & VERA TRUSTEES.

Co	APR	Owner	Lot Acres	M Street Address	M City State Zip	Owner 2
FRE	020-150-11S	KURNOSOFF JIM & VERA TRUSTEES	20.000	17617 W NIELSEN	KERMAN CA 93630	
FRE	020-150-12S	KURNOSOFF JIM & VERA TRUSTEES	10.000	17617 W NIELSEN	KERMAN CA 93630	

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

Ownership Information:

Owner(s):	JIM & VERA KURNOSOFF	Coalition:	Kings River Watershed Coalition Authority		
Parcel Number:	020-100-33S	Acres:	30.8	County:	Fresno

Inspection Findings:

Date Inspected:	3/18/2015
Inspected By:	EEW/RKW
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Furrow
Other/Notes:	

Inspection Photo:



Approved:	RKW	<i>Das</i>	
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CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

Ownership Information:

Owner(s):	JIM & VERA KURNOSOFF TRUS-TEES	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-150-11S	Acres:	20.0	County:	Fresno

Inspection Findings:

Date Inspected:	9/16/2015
Inspected By:	PB
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Unknown
Other/Notes:	

Inspection Photo:



CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

Ownership Information:

Owner(s):	JIM & VERA KURNOSOFF TRUS-TEES	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-150-12S	Acres:	10.0	County:	Fresno

Inspection Findings:

Date Inspected:	9/16/2015
Inspected By:	PB
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Unknown
Other/Notes:	

Inspection Photo:



CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

Ownership Information:

Owner(s):	JIM KURNOSOFF TRUSTEE	Coalition:	Kings River Water Quality Coalition		
Parcel Number:	020-100-32S	Acres:	20.0	County:	Fresno

Inspection Findings:

Date Inspected:	9/16/2015
Inspected By:	PB
Results:	Commercially Irrigated Agriculture
Crop type:	Grapes
Irrigation Method:	Unknown
Other/Notes:	

Inspection Photo:



EXHIBIT B

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

**RECORD OF
COMMUNICATION**

Phone Call Other (specify) _____
 Meeting E-mail _____

PARTIES

Patrick Barnes

Jim Kurnosoff Sr.

DATE/TIME

Initial call: 8/13/2015

Return call:

* Party Initiating Communication

SUBJECT: Need to obtain coverage in the Irrigated Lands Regulatory Program

Phone Number:

Cell Number:

SUMMARY OF COMMUNICATION:

Attempted to contact Mr. Kurnosoff by phone. He said he did not understand and didn't speak English then ended the call abruptly.

WRITTEN BY:

Patrick Barnes

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

**RECORD OF
COMMUNICATION**

Phone Call

Other (specify)

Meeting

E-mail _____

PARTIES

Eric Warren

Jim Kurnosoff Sr.

DATE/TIME

Initial call: 8/17/2015

Return call:

* Party Initiating Communication

SUBJECT: Need to obtain coverage in the Irrigated Lands Regulatory Program

Phone Number:

Cell Number:

SUMMARY OF COMMUNICATION:

Attempted to contact Mr. Kurnosoff by phone. Staff began to explain the program and Mr. Kurnosoff said he didn't understand, didn't speak English and then ended the call.

WRITTEN BY:

Patrick Barnes