



California Regional Water Quality Control Board

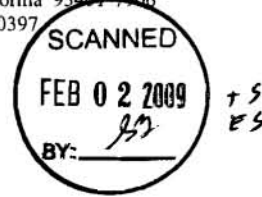
Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

Arnold Schwarzenegger
Governor

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7006
Phone (805) 549-3147 • FAX (805) 543-0397



January 29, 2009

Mr. Dan Franscioni
Franscioni Brothers, Inc.
P. O. Box 7537
Spreckles, CA 93962

Certified Mail 7008 1140 0003 7322 8365

SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE A NOTICE OF INTENT TO COMPLY WITH THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS, FRANSCIONI BROTHERS, INC., MONTEREY COUNTY

Dear Mr. Franscioni:

On January 12, 2009, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) received Franscioni Brothers' agreement to the terms of Order No. R3-2008-0082, *Stipulation For Administrative Civil Liability* (Order), and two checks for a total of \$4,500. On January 29, 2009, Executive Officer Roger Briggs signed the Order on behalf of the Central Coast Water Board. Please see the enclosed copy of the signed Order for your records.

The submitted payments complete the Order's requirements, so Franscioni Brothers does not need to take any further action regarding the settlement.

If you have questions about complying with the Irrigated Lands Waiver, please contact Elaine Sahl at (805) 542-4645, or Alison Jones at (805) 542-4646.

If you have questions about this enforcement action, please contact Todd Stanley at (805) 542-4769.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: Order No. R3-2008-0082, Stipulation for Administrative Civil Liability, signed

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

895 Aerovista Place, Suite 101 895
San Luis Obispo, CA 93401 San Luis



E. Sahl
T. Stanley

In the matter of:)
)
Franscioni Brothers, Inc.)
)
)
)
)

**Order No. R3-2008-0082
Stipulation For Administrative Civil
Liability, Order**

INTRODUCTION:

This Stipulation for Administrative Civil Liability, Order (hereafter "Stipulated Order") is entered into by and between the Prosecution Team of the Central Coast Regional Water Quality Control Board ("Prosecution Team"), and Franscioni Brothers, Inc. ("Franscioni Brothers" or "Discharger") (Collectively "Parties") and is presented to the Executive Officer of the Central Coast Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and pursuant to the authority delegated to the Executive Officer by the Central Coast Regional Water Quality Control Board (Central Coast Water Board).

The Prosecution Team has alleged violations against the Discharger as set forth in Administrative Civil Liability Complaint No. R3-2007-0098 (Complaint), dated December 11, 2007, which is attached hereto as Exhibit "A".

With respect to the alleged violations described in the Complaint, the Prosecution Team has considered the following factors described in California Water Code section 13327, as discussed below:

a. Nature, circumstances, extent, and gravity of the violations:

The Discharger has been given sufficient notice to submit a Notice of Intent to enroll under the Conditional Waiver. However, while compliance with enrollment is essential to Central Coast Water Board regulation, this consideration warrants liability that is less than the maximum because it is a single reporting violation and the discharge subject to the report is not as serious as the full range of discharges covered by the liability statute.

b. Whether the discharge is susceptible to cleanup or abatement and the degree of toxicity of the discharge:

The violation involves non-submittal of a Notice of Intent to enroll under the Conditional Waiver, therefore this consideration does not apply and is neutral with respect to the amount of liability. The Notice of Intent is necessary to ensure compliance with the Conditional Waiver.

c. The ability to pay and the affect on ability to continue in business:

The Discharger farms approximately 2,353 acres in Monterey County. The Water Board has no information that would indicate it cannot pay the recommended liability or that such payment would adversely affect its ability to continue in business.

d. Any prior history of violations and any voluntary cleanup efforts:

Staff is not aware of any prior history of violations. Subsequent to the March 16, 2007 Notice of Violation, Water Board staff contacted Mr. Dan Franscioni on March 30, 2007, and was informed that enrollment forms would be filed. On April 26, 2007, Water Board staff left a message notifying the Discharger that forms were past due. Discharger did not respond to the phone message and did not submit a Notice of Intent until after staff issued the Complaint.

e. Degree of culpability and economic benefit or savings:

The Discharger is culpable because reminders for the need to enroll were ignored. The Discharger knew about the requirement to submit the Notice of Intent and still did not comply. The Discharger realized cost savings by failing to pay fees and failing to perform required water quality monitoring or participate in the Cooperative Monitoring Program established under the Conditional Waiver. The Discharger may have realized additional cost savings by failing to attend required education courses. The Discharger farms approximately 2,353 acres in Monterey County. Staff estimates the cost savings for non-compliance to be approximately \$12,694 (including monitoring costs, State Water Board enrollment fees, and education costs).

On February 28, 2008, Franscioni Brothers paid a total of \$7,961.25 in Cooperative Monitoring Program and enrollment fees required by the Conditional Waiver. This payment reimbursed the mandated monitoring program for fees the Discharger would have paid had it enrolled by the required date of January 1, 2005, thereby reducing the amount of economic benefit realized while in violation of the Conditional Waiver. That payment addressed the enrollment fee and monitoring fee elements of economic benefit as estimated in the Complaint. If not already completed, the Discharger is also required to complete the education and water quality management plan elements. Therefore, upon the Discharger's completion of each element, only the relatively insignificant potential interest earned by delaying these costs will remain as the economic benefit realized by the Discharger.

f. Other matters as justice may require:

Staff time to prepare this Complaint is estimated to be 20 hours at \$125 per hour for a total of \$2,500.

Maximum Liability – Pursuant to California Water Code Section 13261, the Central Coast Water Board can impose civil liability for up to one thousand dollars (\$1,000) per day for each violation of Water Code Section 13260. The Prosecution Team alleges that

the Discharger violated Section 13260 from July 24, 2006, through December 11, 2007, for 505 days. Therefore, 505 violations are subject to the maximum civil liability of \$1,000 per day per violation. The maximum liability the Central Coast Water Board may impose on the Discharger is **five hundred and five thousand dollars (\$505,000)**.

Minimum Liability – California Water Code Section 13261, in establishing the factors for consideration in determining civil liability for violations of Water Code Section 13260, does not specify a minimum liability.

THE CENTRAL COAST WATER BOARD PROSECUTION TEAM AND FRANSCIONI BROTHERS, INC., HEREBY STIPULATE AS FOLLOWS:

- A. Upon issuance by the Executive Officer of the Central Coast Water Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint or which could have been asserted based on the specific facts alleged in the Complaint against Franscioni Brothers, Inc. (Franscioni Brothers), and its subsidiaries, corporate parents, affiliates, successors, heirs, assigns, and their officers, directors, partners, employees, representative agents, and attorneys, as of the effective date of the Complaint.
- B. The Parties covenant and agree that they will not contest the Stipulated Order before the Central Coast Water Board, the State Water Resources Control Board, or any court.
- C. Franscioni Brothers agrees to remit \$2,500 to the State Water Resources Control Board within 30 days of the Effective Date of this Stipulated Order, as provided herein.
- D. Franscioni Brothers agrees to remit \$2,000 to Central Coast Water Quality Preservation, Inc., for the Cooperative Monitoring Program, within 30 days of the Effective Date of this Stipulated Order, as provided herein.
- E. Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability; nor shall it be construed as an admission of violation of any law, rule, or regulations. However, this Stipulated Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Stipulated Order may be used as evidence of a prior enforcement action in any future actions by the Central Coast Water Board against Franscioni Brothers.
- F. The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

- i. In order to settle this matter, Franscioni Brothers will fund a Supplemental Environmental Project (SEP) to provide additional financial support for agricultural water quality monitoring performed pursuant to the Conditional Waiver's Cooperative Monitoring Program by Central Coast Water Quality Preservation, Inc. This monitoring is conducted throughout the Central Coast Region's agricultural areas on a monthly basis. Franscioni Brothers' monetary contribution to the monitoring program will be in addition to monitoring fees it is already required to pay as a result of being enrolled in the Conditional Waiver. Furthermore, the monitoring activities conducted with the SEP funds shall exceed the monitoring conducted using Franscioni Brothers' normal fee contribution to the monitoring program.
 - ii. Central Coast Water Quality Preservation, Inc. will use SEP funds for Follow-up Projects as described in the Conditional Waiver¹.
- G. The Supplemental Environmental Project (SEP) has the following nexus to the violation:
 - i. The Conditional Waiver for Irrigated Lands allows growers to satisfy their legal requirement for water quality monitoring through a cooperative monitoring program, which is conducted by a non-profit agricultural organization, Central Coast Water Quality Preservation, Inc. Growers who did not enroll by the required date also did not pay for water quality monitoring; as a result, enrolled growers in essence subsidized non-enrolled growers. This SEP provides a nexus to the Conditional Waiver requirements, by allowing the Discharger to contribute to the on-going support of the cooperative monitoring program. This SEP has a geographic nexus, in that part of the water quality monitoring is conducted in the watershed where the Discharger's farm is located. This SEP also has a beneficial use nexus, by providing growers with information about the impact of their activities and resulting in implementation of management practices to better protect aquatic habitat and other beneficial uses.
- H. The Executive Officer shall use the following milestone to evaluate the timely and successful completion of the Supplemental Environmental Project (SEP).
 - i. Written confirmation from Central Coast Water Quality Preservation, Inc., of receipt of the full amount within 30 days after the Effective Date of this Stipulated Order, as defined below.
 - ii. Submittal of water quality monitoring data by Central Coast Water Quality Preservation, Inc. (CCWQP) in accordance with the Conditional Waiver's

¹ Projects above and beyond routine monthly monitoring which are designed to further identify sources of pollution. Follow-up Projects are developed by Central Coast Water Quality Preservation, Inc. (CCWQP), and approved by Water Board staff each year. CCWQP will provide a report each year of follow-up projects completed, including an itemized budget, showing SEP funds used.

Monitoring and Reporting Program No. R3-2004-0117. CCWQP will provide a report each year of follow-up projects completed, including an itemized budget, showing SEP funds used. The report shall describe the monitoring conducted with the SEP funds received from the Discharger, and demonstrate that CCWQP applied the SEP funds to monitoring beyond what was accomplished with the Discharger's normal financial contribution to the Cooperative Monitoring Program as mandated by the Conditional Waiver.

- I. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize an element of the SEP, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against Franscioni Brothers.
- J. Nothing in this Stipulated Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
- K. The Executive Officer may extend any of the due dates in this Stipulated Order upon the joint request of the Parties. Such extensions must be in writing.
- L. If the Discharger fails to remit either the payment for the SEP to the payee or the payment to the State Water Board by the date required by this Stipulated Order, the Discharger shall be liable for administrative civil liability in the amount of \$2,000 (the SEP amount the Discharger agreed to pay) plus \$26,000 (the approximate amount Water Board staff agreed to defer from the Complaint's recommended liability on the condition that the Discharger comply with this Stipulated Order) plus the \$2,500 agreed upon in this Stipulated Order for a total of \$30,500. If this occurs, no further notice from the Central Coast Water Board shall be required to establish such liability, and the Discharger must pay the liability within 30 days of the original payment due date in this Stipulated Order. If Franscioni Brothers does not pay the increased liability within 30 days as provided in this Stipulated Order, the Water Board may refer the matter to the Attorney General's Office for collection of \$30,500 plus applicable costs.
- M. The Effective Date of this Stipulated Order shall be the date on which it is executed by the Executive Officer on behalf of the Central Coast Water Board.
- N. This Stipulated Order relates only to administrative civil liability for violations that were alleged in the Complaint or based on facts alleged in the Complaint. The Central Coast Water Board and its Executive Officer reserve all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Assistant Executive Officer signed the Complaint.
- O. In the event that this Stipulated Order does not take effect because it is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise.

The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

- P. Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
- Q. This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
- R. This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Coast Water Board Executive Officer.
- S. This Stipulated Order may be executed by the parties and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED²

Michael J. Thomas
Assistant Executive Officer
On behalf of the Central Coast Water Board Prosecution Team

Date

Approved as to Form:

Reed Sato
Office of Enforcement
State Water Resources Control Board
Attorney for Central Coast Water Board Prosecution Team

Date



Ray Franscioni
Franscioni Brothers, Inc.

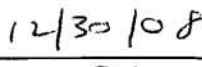


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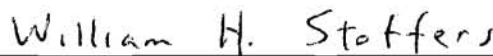
Approved as to Form:



Attorney for Franscioni Brothers, Inc.



Date




Printed Name of Attorney for Franscioni Brothers, Inc.

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE CENTRAL COAST WATER BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13327. The Executive Officer's

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

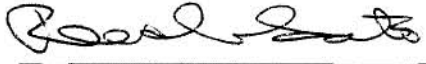
IT IS SO STIPULATED²



Michael J. Thomas
Assistant Executive Officer
On behalf of the Central Coast Water Board Prosecution Team

1-28-09
Date

Approved as to Form:



Reed Sato
Office of Enforcement
State Water Resources Control Board
Attorney for Central Coast Water Board Prosecution Team

1/22/09
Date

Ray Franscioni
Franscioni Brothers, Inc.

Date

Approved as to Form:

Attorney for Franscioni Brothers, Inc.

Date

Printed Name of Attorney for Franscioni Brothers, Inc.

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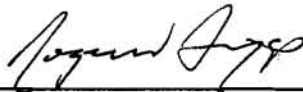
² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

IT IS HEREBY ORDERED, pursuant to section 13261 of the California Water Code and section 11415.60 of the California Government Code, that Franscioni Brothers, Inc. is assessed a civil liability of **\$2,500** for Water Board staff costs, to be paid on or before thirty (30) days after the effective date of this Order. Additionally, Franscioni Brothers, Inc. shall pay **\$2,000** for a Supplemental Environmental Project to provide additional support for agricultural water quality monitoring, to be paid on or before thirty (30) days after the effective date of this Stipulated Order.

Franscioni Brothers, Inc., shall submit a cashier's check for **two thousand, five hundred dollars (\$2,500)**, made payable to the "State Water Resources Control Board "Cleanup and Abatement Account", and the check shall indicate on it the number of this Stipulated Order. Franscioni Brothers shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Roger Briggs, Executive Officer, Central Coast Water Quality Control Board, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, and Reed Sato, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

Franscioni Brothers, Inc., shall also submit a cashier's check for **two thousand dollars (\$2,000)** made payable to "Central Coast Water Quality Preservation, Inc.", and the check shall indicate on it the number of this Stipulated Order. Franscioni Brothers shall send the original signed check to Central Coast Water Quality Preservation, Inc., P.O. Box 1049, Watsonville, CA 95077, with copies sent to: Roger Briggs, Executive Officer, Central Coast Water Quality Control Board, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, and Reed Sato, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.



Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board

JAN. 29, 2009

Date