

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

**TIME SCHEDULE ORDER R5-2013-0900**



**REQUIRING  
F.A. MAGGIORE & SONS, LLC  
TO COMPLY WITH REQUIREMENTS PRESCRIBED IN AN ORDER ISSUED  
PURSUANT TO WATER CODE SECTION 13267**

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. F.A. Maggiore & Sons, LLC ("Maggiore") conducts farming operations on a number of parcels it owns or leases within Contra Costa County. Maggiore has enrolled these parcels in the San Joaquin County & Delta Water Quality Coalition (Coalition) under Resolution No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands; renewed by the board as Resolution R5-2011-0032 (Conditional Waiver). Maggiore must comply with the conditions of the Conditional Waiver for enrolled parcels.
2. The Conditional Wavier requires enrollees to implement management practices, as necessary to improve and protect water quality and to achieve compliance with applicable water quality standards. The applicable water quality standards are outlined in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (Basin Plan). These water quality objectives give narrative limits to the suspended sediment load of discharges, as well as quantitative limits to increases in turbidity.
3. On 7 June, 2012, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0029, finding that Maggiore violated conditions in the Conditional Waiver on 1 July 2010 and 15 June 2011 by discharging sediment-laden irrigation return flows from a 57-acre farming parcel leased and operated by Maggiore in Contra Costa County (APN 011-110-026) into waters of the state and waters of the United States, violating the water quality objectives in the Basin Plan.
4. On 9 July 2012, Central Valley Water Board Enforcement Staff (Enforcement Staff) issued Administrative Civil Liability Complaint No. R5-2012-0534 (Complaint), alleging that Maggiore violated conditions in the Conditional Waiver on 2 May 2011 and 20 June 2011 by discharging sediment-laden irrigation return flows from a 50-acre farming parcel leased and operated by Maggiore in Contra Costa County (APN 011-160-010-2) into waters of the state and waters of the United States, violating the water quality objectives in the Basin Plan.

5. On 22 February, 2013, Enforcement Staff withdrew the Complaint and issued an order pursuant to California Water Code section 13267 directing Maggiore to provide technical reports regarding the implementation of management practices, including a list of all properties owned or leased by Maggiore and which will be irrigated during each of the 2013 through 2015 irrigation seasons (anticipated to be approximately 1,338 acres enrolled in the Coalition). This list will include, regardless of whether the land is owned or leased, Assessor Parcel Numbers, acreage, type of crop, current irrigation management practices and the anticipated management system to be utilized to eliminate the reasonable likelihood of discharge of excess sediment. The technical reports are necessary to determine compliance with the terms of the Conditional Wavier.
6. Although the Central Valley Water Board does not direct Maggiore to implement specific management practices on any particular parcel, Maggiore has indicated that it anticipates that it will install drip irrigation on approximately 75 acres of orchards under production, at a cost of approximately \$125,000, and that it will eventually install and operate return flow pumps or drip irrigation for row crops on a total of more than 1,050 acres, at a total anticipated cost of more than \$300,000 per year.
7. Enforcement Staff believes that this resolution is fair and reasonable, is in the public interest, and comports with the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy).

#### **REGULATORY CONSIDERATIONS**

8. Water Code section 13308 states, in relevant part, "[i]f the regional board determines there is a threatened or continuing violation of any ..... any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule.
9. Water Code section 13308 subdivision (b) states that "[t]he amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations. The amount of the penalty may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs."
10. As a result of the events discussed in this Order, the Central Valley Water Board finds there is a threatened or continuing violation of an order issued under Water Code section 13267.
11. The penalties provided under Water Code section 13308, subdivision (b), are specified below for the tasks required to achieve accelerated compliance with the tasks and facility improvements required by the 13267 Order. The specified

penalty of one thousand dollars (\$1,000) per day for each day in which the violation occurs has been stipulated to by Maggiore and is based on Maggiore's estimation that cost of compliance will exceed \$300,000 per year. This amount is not intended to punish nor redress previous violations.

12. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from provisions of the California Environmental Quality Act, pursuant to Section 15321 subdivision (a)(2), Title 14, California Code of Regulations.
13. In Resolution R5-2009-0027, the Central Valley Water Board delegated to the Executive Officer all delegable actions, including the authority to issue and modify time schedule orders.

**IT IS HEREBY ORDERED**, pursuant to sections 13308 and 13267 of the Water Code and all applicable laws, that:

1. Maggiore, its agents, successors, and assigns shall, in accordance with the following tasks, provide technical reports and required information to the Enforcement Staff pursuant to the time schedule described below in Table 1.

**Table 1 – Time Schedule**

Task	Deadline for Completion	Future Penalty for Non-Compliance
1. <i>Provide a list of all properties owned or leased by Maggiore and which will be irrigated during the 2013 irrigation season, including, regardless of whether the land is owned or leased, Assessor Parcel Numbers, acreage, type of crop, current irrigation management practices and the anticipated management system to be utilized to eliminate the reasonable likelihood of discharge of excess sediment.</i> <sup>1</sup>	15 March 2013	\$1,000 per day (\$365,000 per year)

<sup>1</sup> Excess sediment is an amount of sediment that would cause or contribute to an exceedance of receiving water objectives or an amount of sediment in excess of what is achievable through best practicable treatment or control.

Task	Deadline for Completion	Future Penalty for Non-Compliance
<p>2. <i>Provide a list of all properties owned or leased by Maggiore and which will be irrigated during the 2014 irrigation season, including, regardless of whether the land is owned or leased, Assessor Parcel Numbers, acreage, type of crop, current irrigation management practices and the anticipated management system to be utilized to eliminate the reasonable likelihood of discharge of excess sediment.</i></p>	<p>15 February 2014</p>	<p>\$1,000 per day (\$365,000 per year)</p>
<p>3. <i>Provide a list of all properties owned or leased by Maggiore and which will be irrigated during the 2015 irrigation season, including, regardless of whether the land is owned or leased, Assessor Parcel Numbers, acreage, type of crop, current irrigation management practices and the anticipated management system to be utilized to eliminate the reasonable likelihood of discharge of excess sediment.</i></p>	<p>15 February 2015</p>	<p>\$1,000 per day (\$365,000 per year)</p>

2. All technical reports required herein that involve planning, investigation, evaluation, design, or other work requiring the proper application of engineering or geologic sciences, shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist (as applicable) pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1, and shall be signed by a registered professional.

Any person signing a document submitted under this Order shall make the following certification:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

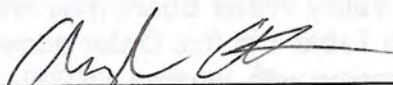
3. In accordance with Water Code section 13308 subdivision (c), if the Enforcement Staff determines that the Discharger has failed to comply with the Order, the Central Valley Water Board may impose the stipulated penalty amount described above in Table 1 of this Order administratively in accordance with Article 2.5 (commencing with Section 13323).
4. In the event that compliance with any deadline set forth in the Order becomes impossible, despite the timely good faith efforts of Maggiore, due to circumstances beyond the control of Maggiore or its agents, employees, contractors, consultants and any other person acting on Maggiore's behalf, and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence by Maggiore, Maggiore shall notify the Enforcement Staff in writing within thirty (30) days of the date that Maggiore first knew of the event or circumstance that caused or would cause a violation this Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. Maggiore shall take all reasonable measures to avoid and minimize such delays. The determination as to whether the circumstances were beyond the reasonable control of Maggiore and its agents will be made by the Enforcement Staff. Where the Enforcement Staff concurs that compliance was or is impossible, despite the timely good faith efforts of Maggiore, due to circumstances beyond the control of Maggiore that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by Maggiore, a new final compliance deadline shall be established. Where the Enforcement Staff does not concur that compliance was or is impossible, the matter will be scheduled for hearing before the Central Valley Water Board and no penalty imposed unless the Central Valley Water Board upholds the Enforcement Staff's determination.

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, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order 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 filling petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/)

or will be provided upon request.

**IT IS SO ORDERED.**

By:   
for PAMELA C. CREEDON, Executive Officer

Date: \_\_\_\_\_