

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

**DRAFT
INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
ORDER NO. R3-2012-0006**

Waste Discharger Identification No. 3401011421

For

**CALIFORNIA VALLEY SOLAR RANCH
DISCHARGES OF FILL MATERIAL TO WATERS OF THE STATE
SAN LUIS OBISPO COUNTY, CALIFORNIA**

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Monitoring and Reporting Program No. R3-2012-0006
Appendix A – Photo Monitoring Protocols

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

SITE OWNER AND LOCATION

1. The High Plains Ranch II, LLC (Discharger), a subsidiary of the SunPower Corporation, proposes to conduct activities that will result in permanent and temporary impacts to ephemeral drainages, wetlands, and other non-federal waters as part of the California Valley Solar Ranch Discharges of Fill Material to Waters of the State (Project).
2. The Discharger proposes to construct the Project on a portion of an approximately 4,990-acre rangeland property immediately north of the California Valley subdivision at the northeastern fringe of the Carrizo Plain in eastern San Luis Obispo County, as shown in the Attachment 1 Project Vicinity Map. The Project site is adjacent to the Temblor Range, 56 miles east of San Luis Obispo and 52 miles southeast of Paso Robles. State Route 58 bisects the site, which occurs on the Simmler, Las Yeguas Ranch and McKittrick Summit United States Geological Survey quadrangles. Natural topography on the site is generally flat with rolling hills and narrow, long fault scarps where the San Andreas rift zone trends along the eastern edge of the Project site. The Project site occurs within the Carrizo Plain Hydrologic Unit as described in the 1994 Water Quality Control Plan for the Central Coast Region (Basin Plan). Surface water at the Project site drains to the south and forms Soda Lake, which is approximately three miles to the south.

PURPOSE OF ORDER

3. On April 11, 2011, H.T. Harvey and Associates on behalf of the Discharger submitted a Report of Waste Discharge (ROWD) for Waste Discharge Requirements (WDRs) to the Water Board for permanent and temporary

impacts and discharges of fill associated with the Project to ephemeral drainages, wetlands, and non-federal waters.

4. On August 12, 2011 the Discharger submitted an amendment to the ROWD that included significant changes to the Project description as proposed on April 11, 2011 (i.e. change in crossing locations, solar array tracker footings in additional drainages, installation of security fencing in seven drainages, and an increase in expected impacts to wetlands).
5. The U.S. Army Corps of Engineers (USACE) disclaimed all waters on the Project site as waters of the United States per a letter dated December 6, 2010 (Attachment 2). The Project is, therefore, subject to permitting from the State, but not the USACE.
6. The proposed Project is a 250-megawatt (MW) solar photovoltaic (PV) energy plant. The Project consists of several components, including photovoltaic panels set on screw or helical pile supports, solar array pier footings, perimeter fire access roads, watercourse road crossings, maintenance roads, voltage collection lines, a substation, a switchyard, an operations and maintenance building, a visitor center, parking areas, security fencing, water tank, and lighting.
7. Project activities with the potential to discharge to waters of the State shown in Attachment 3 include nine individual road crossings, seven permanent and two temporary, over eight ephemeral drainages; placement of fifty-one pier footings spread over two ephemeral drainages and three wetlands; filling a man-made pond located in an abandoned gypsum mine; and array security fencing and utility trenching through ephemeral drainages. The direct, permanent impacts to the ephemeral drainages associated with the Project include 0.03 acres due to 29.76 cubic yards of fill over 223.4 linear feet. The direct, permanent impacts to wetlands associated with the Project is the loss of 0.13 acres due to 0.18 cubic yards of fill and 5662 ft² of shading. The direct permanent impacts to other waters of the State are 0.13 acres due to 213 cubic yards of fill. Direct temporary impacts related to construction of permanent ephemeral drainage crossings, pier footings, array security fencing, and two temporary crossings total 0.02 acres due to 5.4 cubic yards of fill over 256 linear feet. Total project impacts consist of 0.29 acres of permanent impacts and 0.02 acres of temporary impacts.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

8. The County of San Luis Obispo certified the Final Environmental Impact Report for the California Valley Solar Project on April 20, 2011, and filed a Notice of Determination on April 20, 2011, in compliance with the California Environmental Quality Act (Public Resources Code, § 21000, et seq.) in accordance with Title 14, Chapter 3, and § 15301.

BASIN PLAN

9. The Basin Plan was adopted by the Water Board on September 8, 1994, and approved by the State Water Resources Control Board (State Water Board) on November 17, 1994. The Basin Plan incorporates statewide plans and policies by reference and contains a strategy for protecting beneficial uses of State Waters. This Order implements the water quality standards stated in the Basin Plan.
10. Unnamed blue line streams drain the Project area and flow to Soda Lake. The Basin Plan identifies the following present and anticipated beneficial uses of Soda Lake:
 - a. Industrial Process Supply;
 - b. Non-contact water recreation;
 - c. Wildlife habitat;
 - d. Warm fresh-water aquatic habitat;
 - e. Preservation of biological habitats of special significance;
 - f. Rare, threatened, or endangered species;
 - g. Commercial and sport fishing.

ACTIVE CONSTRUCTION STORM WATER DISCHARGES

11. Construction activities associated with the proposed discharges of fill have the potential to threaten beneficial uses on-site and downstream. On August 10, 2011, the Discharger filed a Notice of Intent with the State Water Board for coverage under State Board Order No. 2009-0009-DWQ (amended November 14, 2010 as Order No. 2010-0014-DWQ), *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (General Permit)*. On August 11, 2011, the State Water Board enrolled the California Valley Solar Ranch under the General Permit. The Project's Waste Discharge Identification (WDID) number for construction activities is 340C361667 and the combined calculated Project Receiving Water Risk and Project Sediment Risk Level is 1. The Water Board may conduct inspections to verify compliance with Order No. 2010-0014-DWQ, including, but not limited to, implementation of a storm water pollution prevention plan.

WETLANDS CONSERVATION AND MITIGATION

12. Executive Order W-59-93, dated August 23, 1993, establishes a California Wetlands Conservation Policy including an objective to ensure no overall net loss of and a long term net gain in the quantity, quality, and permanence of wetland acreage and value in California ("No Net Loss Policy").
13. Filling wetlands, riparian areas, headwaters, and other waters causes partial or complete loss of the beneficial uses provided by those waters. To reconcile such losses with the "No Net Loss" requirements of Executive

Order W-59-93 and the "Antidegradation" requirements of State Water Board Resolution No. 68-16, this Order requires the Discharger to implement a mitigation plan to ensure that Project impacts are mitigated through avoidance and minimization, and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation, including restoration and preservation of other waters of the state. These mitigation requirements are consistent with those adopted by the U.S. Environmental Protection Agency and the ACOE for regulation of dredged or fill discharges to federal waters under CWA § 404.

14. This Order specifies waste discharge requirements that are necessary to adequately address effects on, and threats to, water quality standards resulting from discharges of waste and the filling of waters of the State; to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93); to be consistent with antidegradation provisions of State Water Board Resolution No. 68-16; and to accommodate and require appropriate changes during implementation of the Project and its construction. Through adherence to the waste discharge requirements, the Project, as described in this Order, will not result in violation of State water quality standards.
15. For purposes of this Order, restoration is defined as the creation of waters of the State where they previously occurred (e.g., removal of fill material to restore a streambed). Preservation is defined as protecting existing wetlands from destruction from future land use or development (e.g. conservation easement, deed restriction, permanent habitat reserve, etc.)
16. The *California Valley Solar Ranch Project Off-Site Wetland Mitigation and Monitoring Plan, August 24, 2011* (Mitigation Plan) in Attachment 4 will adequately compensate for impacts to waters of the State associated with the discharge of fill material.
17. The mitigation site has soils and hydrology suitable for wetland restoration, and with an active revegetation, monitoring, and maintenance effort, functional and naturally sustained seasonal wetlands will be established on the sites within 3-5 years. The proposed wetland restoration will have the landscape scale ecological benefit of increasing the acreage of wetland habitat on the Carrizo Plain.

GENERAL FINDINGS

18. Section 13260(a) of the California Water Code (CWC) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the

quality of the waters of the State¹, file a ROWD. The discharge of dredged or fill material constitutes a discharge of waste that could affect the quality of waters of the State.

19. CWC § 13263(a) requires that WDRs be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of § 13241 of the California Water Code.
20. On November 3, 2011, the Water Board notified the Discharger and interested agencies and persons of its intention to issue the Individual WDRs and has provided an opportunity to review a copy of the proposed Order and submit views and comments.
21. The Water Board, in a public meeting held on February 2, 2012, heard and considered all comments pertaining to the proposed discharge.

ORDER

IT IS HEREBY ORDERED THAT, High Plains Ranch II, LLC, in order to meet the provisions contained in Division 7 of the CWC and Regulations adopted thereunder, must comply with the following requirements:

PROHIBITIONS

1. The discharge of waste in a manner other than as described in the April 20, 2011 Final Environmental Impact Report for the California Valley Solar Project, Report of Waste Discharge (ROWD), amendments to the ROWD, findings of this Order, or in the August 24, 2011 California Valley Solar Ranch Project Off-Site Wetland Mitigation and Monitoring Plan is prohibited unless the Discharger obtains revised waste discharge requirements that provide for the proposed change prior to the discharge occurring.
2. The discharge of fill material and waste in a manner that has not been described in the ROWD, and for which valid waste discharge requirements are not in force, is prohibited.
3. The discharge of waste shall not create a condition of pollution, contamination, or nuisance, as defined by § 13050 of the CWC.

¹ Waters of the State means any surface water or groundwater, including saline waters, within the boundaries of the state.

4. The discharge shall not directly or indirectly destabilize a channel or bed of a receiving water.
5. The discharge, as mitigated, shall not cause significant adverse environmental impacts.
6. The discharge shall not cause in combination with other discharges a significant cumulative adverse effect on water quality or beneficial uses of the waters of the State including, but not limited to, wetlands and headwaters.
7. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by separate National Pollutant Discharge Elimination System (NPDES) requirements or WDRs are prohibited.
8. The discharge of waste classified as "hazardous" or "designated" as defined in Title 22, § 66261 of the CCR, or CWC § 13173, is prohibited.
9. The discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
10. The unauthorized discharge of treated or untreated sewage to waters of the State or to a stormwater conveyance system is prohibited.
11. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it being transported into the waters, is prohibited unless authorized by the Water Board or State Water Board.

PROVISIONS

General

12. The Discharger must comply with all conditions of this Order. Violations may result in enforcement actions, including Water Board orders or court orders requiring corrective action or imposing civil monetary liability, or in modification or revocation of these waste discharge requirements by the Water Board. (CWC §13261, §13263, §13265, §13267, §13268, §13300, §13301, §13304, §13330, §13340, §13350, and 23 CCR §3867).
13. The Discharger must comply with the Basin Plan provisions, including maintaining the protection of beneficial uses and complying with any prohibitions and water quality objectives governing the discharge. In the event of a conflict between the provisions of this Order and the Basin Plan, the more stringent provisions prevail.

Construction Activities

14. The Discharger must comply with the requirements of State Board Order No. 2010-0014-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, *General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities*.
15. The Discharger must notify the Water Board in writing within ten (10) days following the initiation of discharge of fill to on-site waters of the State.
16. During construction activities within waters of the State, adequate erosion control measures must be kept on site and immediately available for installation. If the National Weather Service predicts a 25% or more chance of rain within 24 hours, all construction activities within waters of the state must cease and the site manager must install effective erosion and sediment control measures. Construction activities in waters of the State may commence and/or resume after the rain event has passed and site conditions are dry enough to work without additional risk of discharging to waters of the State.
17. The Discharger must confine all trash and debris in appropriate enclosed bins and dispose of the trash and debris at an approved site at least weekly.
18. The Discharger must design and construct all impervious surfaces to sheet flow runoff to vegetated, naturally contoured areas. Impervious surfaces must not directly discharge to or be directly connected to any waters of the State.
19. Any proposed change in construction that may alter flow patterns and/or change the approved impact footprint is prohibited without Water Board approval. Not later than thirty (30) days prior to the beginning of any proposed change, the Discharger must submit, for approval by Water Board staff, detailed plans and specifications showing the proposed change in relationship to the approved project.
20. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment may not result in a discharge or a threatened discharge to water bodies. At no time may the Discharger use vehicles or equipment that leaks any substance that might impact water quality. Staging and storage areas for vehicles and equipment must be located at least 100 feet outside of waters of the State.
21. The Discharger must, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the State.

22. All construction-related equipment, materials, and any temporary BMPs no longer needed must be removed and cleaned from the site upon completion of the project.

Site Management

23. During the construction and operational phases of the Project, the Discharger or personnel applying herbicides must have all the appropriate State and local herbicide applicator licenses and comply with all State and local regulations regarding herbicide use. The Discharger must mix herbicides and apply them in conformance with the product manufacturer's directions. The Discharger must use products identified as non-toxic to birds and small mammals near nests or dens, and the Discharger must not apply herbicides within fifty feet of any surface waterbody when water is present. The Discharger must not apply herbicides if the National Weather Service predicts a 25% or more chance of rain within 24 hours, the target area has puddles or standing water, or when wind velocity exceeds ten miles per hour. If the Discharger observes spray to be drifting to a non-target location, the Discharger must discontinue spraying until conditions causing the drift have abated.
24. Dewatering and stream diversion measures are not authorized. The Discharger must submit detailed dewatering or diversion plans for Water Board staff review and approval at least fifteen-days prior to any dewatering or diversion.

Mitigation

25. The Discharger must implement the *California Valley Solar Ranch Project Off-Site Wetland Mitigation and Monitoring Plan, August 24, 2011* in Attachment 4. Vegetation maintenance shall occur a minimum of once per year during the monitoring and maintenance period until all success criteria are achieved.
26. Mitigation shall achieve restoration of a minimum of 0.63 acres of wetland habitat meeting all of the success criteria described in the *California Valley Solar Ranch Project Off-Site Wetland Mitigation and Monitoring Plan, August 24, 2011* by the fifth year following construction. The minimum required restoration to impact ratio for the permanently and temporarily impacted ephemeral drainages, wetlands, and other waters associated with the Project is of 2:1. If mitigation measures do not meet their interim or ultimate success criteria, the discharger shall implement remedial measures that are acceptable to the Water Board's Executive Officer until such time the interim or ultimate success criteria is met.

27. All areas of temporary impacts to waters of the State shall be restored to pre-existing conditions or conditions of improved habitat value and function. Restoration of areas of temporary impacts shall be conducted in a manner consistent with the wetland mitigation, monitoring, maintenance, and schedules identified in the *California Valley Solar Ranch Project Off-Site Wetland Mitigation and Monitoring Plan, August 24, 2011*.
28. The preparation of proposed mitigation areas must be concurrent with (or prior to) the discharge of fill material into waters of the State. The Discharger must complete installation of mitigation no later than nine months following the discharge of fill into on-site waters of the State. Delays in implementing mitigation will result in increased mitigation requirements by 0.01 acre for each month of delay.
29. If at any time during the implementation and establishment of planted or graded mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g. fire, flood) occurs and impacts the mitigation area, the Discharger is responsible for repair and replanting of the damaged area(s).
30. The Discharger shall manage the preserve areas within the Project area boundaries in perpetuity for special-status plant and wildlife habitat, with a dedicated grazing management plan and weed control plan.
31. Within ninety (90) days of the issuance of this Order, the Discharger must provide the Water Board's Executive Officer a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property must be adequate to demonstrate that the site will be maintained without future development or encroachment on the site. The conservation easement or other appropriate legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation.
32. No plant species on the most recent California Invasive Plant Council (Cal-IPC) List, "Exotic Pest Plants of Greatest Ecological Concern in California²" may be planted in mitigation areas, waters of the State, vegetated stormwater BMP areas, or other areas used to convey urban runoff and stormwater.

² The Cal-IPC list may be found on-line at <http://www.cal-ipc.org/>.

33. The Discharger must take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

Monitoring

34. The Discharger shall comply with Monitoring and Reporting Program No. R3-2012-0006 (included as part of this Order), as ordered by the Executive Officer.

Site Access and Information Requirements

35. The Discharger must allow the Water Board, or an authorized representative, upon the presentation of credentials and other documents, as may be required by law, to do the following:
 - a. Enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order;
 - d. Sample, photograph, and monitor at reasonable times, for the purpose of assuring compliance with this Order.
36. The Discharger must furnish, within a reasonable time, any information the Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this Order. The Discharger must also furnish to the Water Board, upon request, copies of records required to be kept by this Order.
37. The CWC provides that any person failing or refusing to furnish technical or monitoring program reports, as required under this Order, or falsifying any information provided in the monitoring reports, is subject to civil liability for each day in which the violation occurs.
38. All reports, notices, or other documents required by this Order or requested by the Water Board must be signed by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of High Plains Ranch II, LLC in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for High Plains Ranch II, LLC; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or (4) by a duly authorized representative of that person.

Any person signing a document under this Order or the associate Monitoring and Reporting Program must 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 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."

39. After notice and opportunity for a hearing, discharges under this Order may be terminated or modified for cause, including, but not limited to, the following:
- Violation of any term or condition of this Order;
 - Obtaining this Order by misrepresentation or failure to disclose all relevant facts;
 - A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

Standard Provisions

40. This Order is not transferable to any person except after notice to the Water Board. In accordance with CWC §13260, the Dischargers must file with the Water Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. The notice must include a written agreement between the existing and new dischargers containing a specific date for the transfer of this Order's responsibility and coverage between the current Discharger and the new discharger. This agreement must include an acknowledgment that the existing Discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on. The Water Board may require modification or revocation and reissuance of this Order to change the name of the dischargers and incorporate such other requirements as may be necessary under the CWC.
41. Any proposed material change in operation must be reported to the Water Board at least thirty (30) days in advance of the proposed implementation of any change. This must include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the project site. For the purpose of this Order, this includes any proposed change in the boundaries of the wetland/waters of the State fill sites. The Water Board may require modification or revocation and reissuance of this Order to change any requirements in this Order and incorporate such other requirements as may be necessary under the CWC.

42. The Discharger must maintain a copy of this Order at the project site so as to be available at all times to site operating personnel and agencies.
43. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
44. The Water Board will consider rescission of this Order upon notification of successful completion of mitigation for all creation, restoration, and enhancement projects required or otherwise permitted now or subsequently under this Order, completion of project construction, and the Water Board's acceptance of these notifications.
45. In an enforcement action, it shall not be a defense for the Discharger that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this Order. Upon reduction, loss, or failure of the treatment facility, the Dischargers must, to the extent necessary to maintain compliance with this Order, control production or all discharges, or both, until the facility is restored or an alternative method of treatment is provided. This provision applies for example, when the primary source of power of the treatment facility fails, is reduced, or is lost.
46. The filing of a request by the Discharger for the modification, revocation and reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

NOTIFICATIONS

47. All information requested by the Water Board is pursuant to CWC § 13267. Civil liability may be administratively imposed by the Water Board for failure to furnish requested information pursuant to CWC § 13268.
48. These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to § 402 of the Clean Water Act.
49. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.

CERTIFICATION

This Order becomes effective on the date of adoption by the Water Board.

I, Roger Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on February 2, 2012.

Roger Briggs
Executive Officer

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