

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

ORDER R5-2013-XXXX

WASTE DISCHARGE REQUIREMENTS

FOR

**FRIANT RANCH, A LIMITED PARTNERSHIP
FRIANT RANCH SPECIFIC PLAN PROJECT
FRESNO COUNTY**

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

Discharger

1. On 25 March 2010, Friant Ranch, A Limited Partnership (hereinafter Discharger) submitted a federal Clean Water Act (CWA) § 401 Water Quality Certification Application Form to the Central Valley Water Board that identified its intent to fill isolated waters of the State to develop a large-scale, age-qualified, active-adult, mixed-use master planned community in Fresno County (Project). The § 401 Water Quality Certification Application Form as prepared by the Discharger is sufficient to meet the requirements for submitting a Report of Waste Discharge (ROWD) for fill of isolated waters of the State. The ROWD was deemed complete on 26 October 2010. As described in the findings that follow, this Order regulates discharges of dredge and fill materials to 1.35 acres of isolated waters of the State.

Project Location and Description

2. The Project site is in north central Fresno County, adjacent to the unincorporated community of Friant. The 942-acre Project site is situated east of Friant Road and west of the Friant-Kern Canal in close proximity to the San Joaquin River and Millerton Lake. The Project site occupies portions of Sections 7, 8, 17, and 18 within Township 11 South, Range 21 East, Mount Diablo Base Line and Meridian. See Attachment A for a general location map.
3. Fresno County approved the Project through adoption of the Friant Ranch Specific Plan, which is within the greater Friant Community Plan area. The Project is a mixed use, master-planned community development consisting of approximately 2,500 dwelling units, of which 2,270 will be age-qualified (55 and over) units. The developed portion of the Project site comprises a total of 482.2 acres and will necessitate discharges of dredge and fill materials to Project site surface waters. The remaining 460 acres will remain undisturbed and will be dedicated as a permanent open space preserve.
4. The Project's land use plan includes medium density and medium-high density residential uses consisting of single-family and multi-family homes. The Project also includes a Village Center on approximately 32 acres which will contain a mix of retail, office, medical, and social

gathering uses, and may include approximately 50 non-age-qualified mixed use housing units. In addition, the Project includes an active adult recreation center. The onsite storm drainage facilities will be designed in accordance with Low Impact Development standards and principles. The Project's land use plan also includes 22.4 acres of re-vegetated open space slopes adjacent to the 460-acre open space preserve.

Site Regulation

5. Generally, the CWA and regulations promulgated thereunder apply to discharges of dredged and fill materials and the discharges of pollutants to waters of the United States (waters of the U.S.). Waters that do not fall under the regulatory umbrella of the federal CWA and its regulations are commonly called non-jurisdictional waters. Waters of the State, as defined by California Water Code (CWC) § 13050, include both waters of the U.S. and non-jurisdictional waters.
6. The Central Valley Water Board has largely relied upon its authority under CWA § 401 to regulate discharges of dredged or fill material to waters of the State. That section requires an applicant to obtain "water quality certification" from the Central Valley Water Board that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to § 401 include permits for the discharge of dredged or fill material (CWA § 404 permits) issued by the U. S. Army Corps of Engineers (Corps).
7. The Corps approved a jurisdictional delineation of the Project site on 1 October 2008 that identifies 31.35 acres of waters of the U.S. (wetlands and other waters) present on the site.
8. The Corps-approved delineation indicated there will be discharges of dredged and fill material to 5.43 total acres at 140 locations in waters of the U.S. that are subject to regulation under federal CWA §401 and § 404. On 13 March 2012, the Central Valley Water Board issued a CWA § 401 Water Quality Certification for proposed discharges of dredge and fill materials at these locations.
9. The Corps determined on 1 October 2008 that approximately 3.65 acres of the existing wetlands and waters on the Project site are non-jurisdictional for purposes of CWA § 404 due to the nature of the wetlands and waters as non-navigable, isolated water bodies. However, the non-jurisdictional vernal pools and swales are waters of the State subject to regulation under the CWC.
10. Construction of the Project will involve the proposed discharge of structural materials and/or earthen materials (fill) at 65 Project locations that are in non-jurisdictional waters, as listed in Attachment B. This Order regulates only the proposed discharges of dredged and fill materials to these non-jurisdictional isolated waters.
11. Vernal pools and swales are shallow waters of the State, which are by their nature affected most often and severely by filling and excavation. Regulatory attention to these water bodies is

necessitated by the California Wetlands Conservation Policy (Executive Order W-59-93, signed 23 August 1993); the high habitat value of these waters; the basin-wide value of these waters for pollutant removal, floodwater retention, channel stability, and habitat connectivity; the high number of special-status species associated with these waters and their associated habitats; the high percentage of historic losses of these waters in California; the vulnerability of these waters to future impacts from projected population growth and land development; and the high level of public interest in these waters.

12. This Order is necessary to adequately address potential and planned impacts to waters of the State from the Project, to require mitigation for these impacts to comply with the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan), to fulfill the Central Valley Water Board's obligation to act on the Discharger's application, and to satisfy the objectives of the California Wetlands Conservation Policy. The goals of the California Wetlands Conservation Policy include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values..."
13. This Order does not regulate storm water discharges that may result from the Project during construction. Discharges of pollutants associated with construction-related storm water runoff in the San Joaquin River watershed are subject to National Pollutant Discharge Elimination System permitting under CWA § 402. The Discharger must file a Notice of Intent to comply with *State Water Resources Control Board Order No. 2009-0009-DWQ (as amended by Order No. 2010-0014-DWQ)*, *National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities* (Construction General Permit) to cover discharges of construction related storm water. Discharge of any pollutants to waters of the State resulting from storm water during construction must also be conducted in accordance with the Friant Community Plan Update and Friant Ranch Specific Plan Environmental Impact Report (EIR) certified by Fresno County on 1 February 2011, and the corresponding mitigation monitoring program adopted by the County as conditions of the Friant Ranch Specific Plan approval.
14. This Order does not regulate discharges from the proposed Project wastewater treatment facility, water reclamation facility, or ongoing municipal storm water discharges. If applicable, these discharges will be regulated under separate orders.

Site-Specific Conditions

15. The Project site is generally undeveloped. The site consists of non-native grassland habitat utilized for cattle grazing. Surrounding land use is a mix of developed and undeveloped lands. Some lands to the west have been modified by sand and gravel quarrying and a public park along the San Joaquin River. The unincorporated community of Friant is to the north with commercial and residential development. Private undeveloped ranchland is to the south and east.

16. Elevation ranges from 330 to 694 feet (National Geodetic Vertical Datum). The topography is characterized by rolling grass-covered hillsides and meandering waterways that lead to pockets of seasonal vernal pools. The soils of the site consist of alluvium derived primarily from plutonic rocks of the Sierra Nevada to the east. Some of the soils have developed a subsurface iron-silica hardpan at 2-6 feet below the surface that perches water during late winter and early spring creating seasonal pools in topographic depressions.
17. The Project site experiences a Mediterranean climate with hot, dry summers and cool, moist winters. Average summer temperatures (degrees Fahrenheit) range from highs in the upper 90s and lows in the 50s. Average winter temperatures range from highs in the low 60s and lows in the 30s. Average annual precipitation is approximately 15 inches, most of which falls between the months of October and March.

**Impacts and Mitigation and Monitoring Plan
for Discharges
of Dredge and Fill to Waters of the State**

18. As described in Findings 8 and 10, the Project includes 205 water locations that will be impacted. There are 140 sites that will be impacted within jurisdictional waters of the U.S. The remaining 65 sites are within non-jurisdictional waters of the State. Total permanent impacts to non-jurisdictional waters of the State include 1.35 acres of non-jurisdictional isolated waters, including 0.52 acres of vernal pool habitat and 0.83 acres of vernal swale habitat, which are addressed by this Order.
19. On 11 July 2012, the Discharger submitted a document entitled Mitigation and Monitoring Plan, Friant Ranch Specific Plan, dated May 2009 (Mitigation Plan). The Mitigation Plan proposes to mitigate for impacts to both the jurisdictional and non-jurisdictional waters of the State through the creation/restoration of wetlands. As described in the Mitigation Plan, the Discharger will provide for the creation/restoration of 1.35 acres of wetlands either by purchasing constructed vernal pool and/or vernal swale creation/restoration credits from a Corps-approved mitigation bank within the San Joaquin River watershed, or by creating or restoring 1.35 acres of vernal pool and/or vernal swale habitat on the Drayer Ranch in Merced County, which will be protected in perpetuity under conservation easement. Or, in the alternative, the Discharger may provide for the creation/restoration of 1.35 acres of vernal pool and/or vernal swale habitat at any other appropriate site approved by the Executive Officer, which must be protected in perpetuity under conservation easement. Portions of the Drayer Ranch have previously been preserved as the Drayer Conservation Bank. These created/restored wetlands will be in addition to the 5.43 acres of wetlands to be created/restored to offset Project impacts to waters of the U.S.
20. Additionally, to mitigate for loss of waters of the State and the U.S., the Discharger proposes in the Mitigation Plan to permanently protect one onsite and three off-site open space preserves under conservation easements. The undisturbed onsite preserve will total approximately 460 acres in size. Three off-site preserves, located in the proximity of

the Project area (see Attachment C), have been acquired with a combined area of 1,054 acres. These off-site preservation areas are known as the Friant Ranch East Preserve (208 acres), the Nohrnberg Preserve (583 acres), and the Klein-Morgan Preserve (263 acres). An estimated total of 28.2 acres of wetlands and other waters will be protected in the onsite preserve and 60.4 acres of wetlands and other waters exist at the off-site preservation areas for a total of 88.6 acres of wetlands and other waters. Table 1 lists the estimated area of existing wetlands, by type, for each preserve area.

Table 1. Summary of Preserved Waters of the State

	Vernal Pool (acres)	Vernal Swale (acres)	Channel (acres)	Total (acres)
Onsite	13.4	8.1	6.8	28.2
Friant Ranch East	<0.1	3.6	1.8	5.5
Nohrnberg	15.4	18.2	14.3	47.9
Klein-Morgan	3.8	3.2	0.0	7.0
Total	32.7	33.1	22.9	88.6

21. This Order serves as the Central Valley Water Board approval of the Mitigation Plan.
22. The Discharger submitted draft Long-Term Management Plans for the Friant Ranch East Open Space Preserve, the Klein-Morgan Open Space Preserve, the Friant Ranch Open Space Preserve, and the Nohrnberg Open Space Preserve, all dated 18 March 2013, (collectively referred to as Long-Term Management Plans).
23. The Long-Term Management Plans are a key component of the Mitigation Plan addressing impacts to waters and state and federal endangered species subject to the permit authority of the Corps, the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, and the Central Valley Water Board. The listed agencies only have authority/control over the management plan implementation, enforcement and future revision to the extent of their explicit legal authority over the resources they regulate. The Central Valley Water Board has authority over management activities related to any discharge of waste that could affect the quality of waters of the State.
24. The Long-Term Management Plans state that the Discharger will conduct maintenance and monitoring to ensure success at the mitigation sites. This Order requires the Discharger to proceed with the proposed Long-Term Management Plans and requires monitoring and adaptive management measures to ensure successful implementation.
25. This Order approves the draft Long-Term Management Plans, dated 18 March 2013 for the purposes of this Order. Any changes to the Long-Term Management Plans concerning management activities related to waters that may be required by the Corps,

the U.S. Fish and Wildlife Service, or the California Department of Fish and Wildlife will require Central Valley Water Board Executive Officer approval.

Basin Plan, Beneficial Uses, and Water Quality Objectives

26. The Basin Plan designates beneficial uses, establishes narrative and numerical water quality objectives, contains implementation plans and policies to protect waters of the Basin, and incorporates, by reference, plans and policies of the State Water Resources Control Board (State Water Board). Pursuant to § 13263(a) of the CWC, these requirements implement the Basin Plan.
27. The Project will affect isolated non-jurisdictional wetlands within the San Joaquin River Basin of the Central Valley Region. The Basin Plan does not designate beneficial uses for isolated wetlands in the San Joaquin Basin of the Central Valley Region. However, CWC § 13263 (a) requires that waste discharge requirements (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* [emphasis added], the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of CWC § 13241. In addition, the Basin Plan states that beneficial uses will be evaluated on a case-by-case basis for unidentified water bodies.
28. Beneficial uses present in the Project area include rare, threatened, or endangered species (RARE); warm freshwater habitat (WARM); and wildlife habitat (WILD). Biological surveys conducted for preparation of the Project EIR show the isolated wetlands in the Project area support special status plant and wildlife species; warm freshwater aquatic life; and wildlife.
29. The beneficial uses of underlying groundwater in the Project area are municipal and domestic supply, agriculture supply, and industrial service and process supply.

Antidegradation Analysis

30. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*). Resolution No. 68-16 requires that existing high quality of waters be maintained unless degradation is justified based on specific findings. Pursuant to this policy, a report of waste discharge must include information regarding the nature and extent of the discharge and the potential for the discharge to affect surface or groundwater quality in the region. In addition, the discharger must identify treatment or control measures to be taken to minimize or prevent water quality degradation.

31. As described below, the permitted discharges will be controlled through the requirements herein as well as the application of mitigation measures for the discharges of dredge and fill materials. The permitted discharges will not cause violations of water quality objectives within any surface waters or groundwater under the Basin Plan, will not unreasonably affect beneficial uses, and will be to the maximum benefit of the people of the State. More specifically, the permitted discharge is consistent with the antidegradation provisions of State Water Board Resolution No. 68-16 for the following reasons:

a. The degradation will not result in water quality less than that prescribed in the Basin Plan.

This Order contains discharge prohibitions, discharge specifications, groundwater limits, and reporting provisions that require compliance with Basin Plan water quality objectives; thus, this Order does not authorize exceedences of Basin Plan water quality objectives.

b. The degradation will not unreasonably affect present and potential beneficial uses.

While the permitted discharges will cause degradation (by and through the complete fill and removal) with respect to the 1.35 acres of isolated waters that are proposed to be filled, the filling of these waters will be mitigated by the creation/restoration and preservation of wetlands. The Discharger will also be required to conduct monitoring and reporting to ensure success at the mitigation site(s) as described in Monitoring and Reporting Program R5-2013-XXXX. With respect to waters other than those proposed to be filled as part of the Project, this Order ensures that present and potential beneficial uses will not be affected. The Discharger is prohibited from undertaking any dredge and fill activities not specifically authorized herein, and shall not cause or threaten to cause a nuisance or pollution, as defined in CWC § 13050. The Discharger is further required to adhere to construction and post-construction measures that will apply best practicable treatment or control, discussed below, that will avoid impacts on any present and potential beneficial uses.

c. Dischargers must use the best practicable treatment or control (BPTC) to avoid pollution or nuisance and maintain the highest water quality consistent with maximum benefit to the people of the State.

A total of nine alternative project designs were proposed for the Project, ranging from developing the entire Project area to avoiding all surface waters. A CWA § 404(b)(1) alternatives analysis that examined three of the onsite alternatives and onsite avoidance and minimization measures was prepared to document the Discharger's planning process. The analysis also considered 14 off-site

alternative locations for the Project. The analysis concluded the proposed Project is the least damaging practicable alternative.

The Discharger will implement an integrated mitigation plan to compensate for the loss of wetlands and associated threatened and endangered species habitats that would result from the Project. The Mitigation Plan incorporates a combination of measures including purchase of mitigation bank credits to create/restore vernal pool and/or vernal swale habitat or an option for creation/restoration of vernal pool and/or vernal swale habitat at Drayer Ranch, preservation of existing habitats, and management of the preserved habitats to maximize wetland function and wetland restoration and prevent future degradation. Or, in the alternative, with respect to the creation/restoration of vernal pool and/or vernal swale habitat, the Discharger may create/restore 1.35 acres of vernal pool and/or vernal swale habitat at any other appropriate site approved by the Executive Officer. The mitigation plan is designed to assure that there will be no net loss of wetland function or area.

Implementation of these measures reflects BPTC.

- d. Any change in water quality must be consistent with maximum benefit to the people of the State.*

Any degradation that will occur as a result of the dredge and fill activities authorized under this Order will comply with water quality objectives and protect designated beneficial uses, and is consistent with the maximum benefit to the people of the State. The Project implements and furthers plans and public policies adopted and endorsed by the County of Fresno related to urban growth, as set forth in Fresno County Resolution 11-031, adopted 1 February 2011. Specifically, the Findings adopted by the County as part of that Resolution state that the Project will:

- i. generate significant and needed economic output in the County, including positive fiscal impacts to the County's operating funds;
- ii. generate significant and needed employment for the County, consistent with the Fresno Regional Jobs Initiative;
- iii. provide unique social and recreational benefits, including needed housing that will accommodate the varying lifestyles and income levels of Fresno's expanding Active Adult (55+) population, as well as considerable open space, trails, and linkages to recreational amenities;

- iv. provide needed infrastructure improvements to serve the larger community in the Project area; and
 - v. preserve and protect, more than half of the Project area as open space, to be preserved in perpetuity, consistent with the Fresno County 2025 General Plan.
32. Given Finding 31 (a-d), the proposed discharges authorized herein comply with Resolution 68-16.

CEQA

33. The County of Fresno, acting as California Environmental Quality Act (CEQA, Public Resources Code § 21000, et seq.) Lead Agency, certified the Final EIR for the Friant Community Plan Update and Friant Ranch Specific Plan on 1 February 2011. A Notice of Determination was filed with the State Clearinghouse on 3 February 2011 by the County of Fresno.
34. The County of Fresno adopted a Statement of Overriding Considerations for significant impacts considered unavoidable and not reduced to a level of Less Than Significant by mitigation. The unavoidable significant impacts not expected to be reduced by mitigation listed in the EIR were related to aesthetics, agricultural resources, air quality, climate change, noise, and traffic and transportation resources.
35. The EIR concludes that the Project is not expected to cause or contribute to any violation of applicable water quality standards or substantially degrade existing water quality, and that the implementation of specific mitigation measures will further reduce potential impacts to water quality to a less than significant level.
36. The Central Valley Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations (CCR), title 14 section 15096, reviewed both the Notice of Preparation of an EIR and the Draft EIR for the Project, and submitted comments to the County of Fresno accordingly. The Central Valley Water Board also evaluated the potentially significant impacts resulting from the fill of isolated wetlands and related mitigation measures identified in the Final EIR. Mitigation measures imposed on the Project in the Final EIR to ensure that impacts resulting from the fill of isolated wetlands are less than significant are summarized in Attachment D. The mitigation measures identified in the Final EIR, supplemented with the provisions in this Order, are adequate to reduce potentially significant impacts resulting from the dredge and fill of isolated wetlands to less than significant levels.

General Findings

37. Pursuant to CWC § 13263(g), discharge is a privilege, not a right, and adoption of this Order does not create a vested right to continue the discharge.

38. The Central Valley Water Board will review this Order periodically and will revise requirements when necessary.

39. California Water Code § 13267(b) states that:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including the costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

40. The technical reports required by this Order and the attached Monitoring and Reporting Program R5-2012-xxxx are necessary to assure compliance with these waste discharge requirements. The Discharger operates the Project that discharges the waste subject to this Order.

Public Notice

41. All the above and the supplemental information and details in the attached Information Sheet, which is incorporated by reference herein, were considered in establishing the following conditions of discharge.

42. The Discharger and interested agencies and persons have been notified of the intent to prescribe waste discharge requirements for this discharge, and have been provided an opportunity for a public hearing and an opportunity to submit their written views and recommendations.

43. All comments pertaining to the discharge were heard and considered in a public meeting.

IT IS HEREBY ORDERED that, pursuant to § 13263 and § 13267 of the California Water Code (CWC), Friant Ranch, a Limited Partnership and its agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder,

shall comply with the following:

A. Discharge Prohibitions

1. Discharge of dredge and fill materials not described in the ROWD submitted by the Discharger on 25 March 2010, Findings 10 and 18, and Attachment B are prohibited.
2. Discharge shall not violate any discharge prohibitions contained in the Basin Plan.
3. Discharge causing or threatening to cause pollution, contamination, or nuisance as defined in CWC § 13050 is prohibited.
4. Discharge of waste classified as “hazardous”, as defined in § 2521(a) of Title 23, CCR, § 2510 et seq., is prohibited. Discharge of waste classified as ‘designated’, as defined in CWC § 13173, in a manner that causes violation of groundwater limitations, is prohibited.
5. Operation of equipment in areas of flowing or standing water is prohibited.
6. Fueling, cleaning, or maintenance of vehicles or equipment; and storage of construction materials and heavy equipment within any areas where an accidental discharge to waters of the State may occur is prohibited.

B. Discharge Specifications

1. Dredge and fill activities will be conducted when water bodies are dry to the maximum extent practicable.
2. Except for specific dredge and fill activities described in the ROWD, Attachment B, or the 401 certification for the Friant Ranch Specific Plan Project 404 permit (U.S. Army Corps of Engineers File No. SPK-2004-00966), no debris, soil, silt, sand, cement, concrete, or washings thereof, other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. Upon completion of construction, all construction-related materials shall be removed from the work area and any areas adjacent to the work area.
3. The Discharger shall comply with all California Department of Fish and Game Code § 1600 requirements for the Project.
4. The Discharger shall implement the mitigation measures specified in the Final Environmental Impact Report for the Project as they pertain to biology, hydrology, and water quality impacts.

5. All areas disturbed by Project activities shall be protected from washout or erosion.
6. Disturbance or removal of vegetation in the Project area shall be minimized. Native species shall be used for re-vegetation of disturbed areas.

C. Groundwater Limitations

The discharges authorized herein shall not cause groundwater to contain waste constituents in concentrations greater than the ambient quality.

D. Provisions

1. The Discharger shall comply with the *Standard Provisions and Reporting Requirements for Waste Discharge Requirements*, dated 1 March 1991, which is made part of this Order.
2. The Discharger shall comply with Monitoring and Reporting Program R5-2013-XXXX, which is made a part of this Order, and future revisions thereto as specified by the Executive Officer.
3. The Discharger shall maintain a copy of this Order and supporting documentation (Attachments) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the Project shall be adequately informed and trained regarding the conditions of this Order.
4. This Order hereby approves the draft Mitigation and Monitoring Plan, Friant Ranch Specific Plan, dated 1 May 2009 (Mitigation Plan), as final for the purposes of this Order. Any proposed modifications to the plan must be submitted **90 days** prior to implementation to the Executive Officer for approval. The Discharger shall not implement the proposed changes until it obtains written approval from the Executive Officer or the Central Valley Water Board, as appropriate.
5. This Order hereby approves the draft Long-Term Management Plans for the Friant Ranch East Open Space Preserve, the Klein-Morgan Open Space Preserve, the Friant Ranch Open Space Preserve, and the Nohnberg Open Space Preserve, all dated 18 March 2013, as final for the purposes of this Order. Any proposed modifications to the plans must be submitted **90 days** prior to implementation to the Executive Officer for approval. The Discharger shall not implement the proposed changes until it obtains written approval from the Executive Officer or the Central Valley Water Board, as appropriate.
6. The Discharger shall provide the Central Valley Water Board with evidence of the creation/restoration of 1.35 acres of vernal pool and/or vernal swale habitat, as

described in Finding 19, by either:

- a. providing proof of purchase of constructed vernal pool and/or vernal swale creation/restoration credits totaling 1.35 acres from a Corps-approved mitigation bank within the San Joaquin River watershed **prior to initiating grading within waters of the State**; or
 - b. providing, **not less than 120 days prior to initiating grading within waters of the State**, a Vernal Pool/Swale Creation/Restoration Plan, prepared by a qualified professional, for Executive Officer approval for creation/restoration of 1.35 acres of vernal pools and/or swales at the Drayer Ranch site, as described in the Mitigation Plan, or any other appropriate site that is approved by the Executive Officer. Initial construction of the creation/restoration mitigation must be completed within 1 year of initial impacts to waters of the State. **Within 30-days of completion** of construction of the creation/restoration mitigation site, the Discharger shall submit complete sets of as-built plans for the site to the Executive Officer for review.
7. All areas used to mitigate for permanent impacts to waters of the State identified in Attachment B must be protected in perpetuity from land-use and maintenance activities that would threaten water quality or beneficial uses within the preservation area. Not less than **one-hundred and twenty (120) days prior to initiating grading within waters of the State**, the Discharger shall submit draft conservation easements for the onsite preserve, the Friant Ranch East Preserve, the Nohnberg Preserve, the Klein-Morgan Preserve, and, if the Discharger chooses Provision 6.b to comply with this Order, the Drayer Ranch creation/restoration site or other appropriate site that is approved by the Executive Officer to the Central Valley Water Board's Executive Officer for review and acceptance as consistent with the provisions within the Mitigation Plan that relate to Central Valley Water Board requirements. The language of the conservation easements shall follow the California Department of Fish and Wildlife and/or U.S. Fish and Wildlife Service templates and guidelines for conservation easements and shall identify the third-party nonprofit entity qualified to hold a conservation easement under California Civil Code, § 815.3, to whom the conservation easement would be granted. The conservation easements shall include provisions and responsibilities of the Discharger and the designated land trust organization, including any future transfers of the easement or fee interest that may be anticipated, and must grant access rights to Central Valley Water Board staff. The conservation easements shall also specify the purposes for which they are established and include a list of prohibited activities that are inconsistent with the purpose and maintenance of the preservation areas.
8. **Not less than one-hundred and twenty (120) days prior to initiating grading within waters of the State**, the Discharger shall provide to the Central Valley Water Board's Executive Officer evidence that the endowment amounts, as calculated by the Property Analysis Record software program and approved by the California

Department of Fish and Wildlife, necessary to provide funding for monitoring and perpetual management and maintenance of the mitigation features and habitat in the preservation areas and, if applicable, the Drayer Ranch or other appropriate mitigation area have been funded. The principal in the endowments should generate sufficient revenue to cover the costs described in the Monitoring and Reporting Program R5-2013-XXXX including funding for any extended monitoring and maintenance activities, as well as contingency measures, that the Central Valley Water Board's Executive Officer may determine are necessary to meet the mitigation requirements for the Project.

9. If the Discharger elects to mitigate for wetland impacts by creating/restoring 1.35 acres of vernal pools and/or swales at the Drayer Ranch site or any other appropriate site approved by the Executive Officer (i.e., Provision D.6.b), the mitigation areas at the Drayer Ranch site or other appropriate approved site must fully meet the established functional success criteria of the Mitigation Plan by **no later than 5 years** from the date the as-built plans for the creation/restoration area are submitted to the Central Valley Water Board. If the mitigation areas fail to meet the criteria, the Discharger must provide by this date a technical report proposing remedial measures, for acceptance by the Central Valley Water Board's Executive Officer, to be implemented within 1 year following the determination that success criteria were not met.
10. If the Discharger elects to mitigate for wetland impacts by creating/restoring 1.35 acres of vernal pools and/or swales at the Drayer Ranch site or any other appropriate site approved by the Executive Officer (i.e., Provision D.6.b), **not less than one-hundred and twenty (120) days** prior to initiating grading in waters of the State, the Discharger shall provide to the Central Valley Water Board's Executive Officer a performance bond for 120% of the amount required to complete the Drayer Ranch or other appropriate approved site establishment (creation) and/or enhancement.
11. The discharge of fill material described in the ROWD submitted by the Discharger on 25 March 2010 or Attachment B is limited to those described therein. The Project must be constructed and operated in accordance with the ROWD, its supporting documents, and this Order. The Discharger shall file a supplemental ROWD if material changes in location, quantity, or character of the discharge are required.
12. Any and all monitoring reports required by this Order are required pursuant to CWC § 13267.
13. The Discharger shall provide the name and contact information of any third party accepting responsibility (liability) for implementing the mitigation requirements of this Order. Written notification shall be submitted to the Central Valley Water Board within **60 days of the proposed transfer of responsibility**. The notification shall include a signed statement from the new party demonstrating acceptance and understanding of

the responsibility to meet the mitigation conditions and applicable requirements of this Order, or the liability will remain with the Discharger.

14. The Discharger shall attach a signed, certified cover letter to all monitoring reports provided to the Central Valley Water Board. The certified cover letter shall clearly identify any violations of this Order, discuss corrective actions taken or planned, and propose a time schedule for completing identified corrective actions. Identified violations shall include a description of the violation.
15. The Central Valley Water Board may review and revise waste discharge requirements in accordance with CWC § 13263, subdivisions (e) and (f). The Central Valley Water Board will review this Order periodically and will revise requirements when necessary.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$5,000 per violation, per day, depending on the violation, pursuant to the CWC, including § 13268 and § 13350. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Water Board to review the action in accordance with CWC § 13320 and CCR, title 23, § 2050 and following. The State Water Resources Control 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 Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

I, PAMELA C. CREEDON, 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 Valley Region, on XX July 2013.

PAMELA C. CREEDON, Executive Officer

Order Attachments: A. Location Map and Project Area Map
B. Dredge and Fill Location Identification Number and Attributes
C. Preservation Area Map
D. California Environmental Quality Act Mitigation Measures

Monitoring and Reporting Program R5-2013-XXXX
Information Sheet

Standard Provisions for Waste Discharge Requirements (1 March 1991)