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## Colorado River Basin Regional Water Quality Control Board

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### CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

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**Effective Date:** July 23, 2020

**Program Type:** Fill/Excavation

**Project Type:** Alternative Energy (Solar)

**Project:** Ocotillo Solar Project  
Regulatory Measure ID: 437209  
WDID: 7B133044001  
Please ID: 865517  
U.S. Army Corps of Engineers Nationwide Permit: 51

**Applicant:** Ocotillo Wells Solar, LLC

**Applicant Contact:** R. Andrew dePass  
2925 Richmond Avenue, 11<sup>th</sup> Floor  
Houston, Texas 77098  
Email: [adp@vitol.com](mailto:adp@vitol.com)

**Applicant's Agent:** Michael Baker International

**Agent Contact:** Timothy Tidwell  
Project Manager  
5 Hutton Centre Drive  
Santa Ana, California 92707  
Phone: (949) 330-4208  
Email: [timothy.tidwell@mbakerintl.com](mailto:timothy.tidwell@mbakerintl.com)

**State Water Board Staff:** Kai Dunn

Senior Water Resources Control Engineer  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
Phone: (760) 776-8986  
Email: [kai.dunn@waterboards.ca.gov](mailto:kai.dunn@waterboards.ca.gov)

**State Water Board Contact Person:**

If you have any questions, please call the Colorado River Basin Regional Water Quality Control Board (Colorado River Basin Water Board) staff contact listed above or call (760) 346-7491 and ask to speak with the 401 Water Quality Certification Program Manager.

**I. Order**

This Clean Water Act (CWA) section 401 Water Quality Certification and Order (Order) is issued at the request of Ocotillo Wells Solar, LLC (OWS or Permittee) for the Ocotillo Solar Project (Project). This Order is for the purpose described in the application and supplemental information submitted by the Permittee. The application was received on March 3, 2020. The application was deemed complete on April 15, 2020.

**II. Public Notice**

The Colorado River Basin Regional Water Quality Control Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from March 16, 2020 to April 6, 2020. The Colorado River Basin Water Board did not receive any comments during the comment period.

**III. Project Purpose**

The Project involves the construction and operation of a commercial-scale photovoltaic solar farm to provide 50 megawatts of power to the Imperial Irrigation District (IID) transmission grid, decreasing demand on the capacity of the existing power distribution system and reducing the potential for power shortages to occur.

**IV. Project Description**

Energy generated by the Project would be transmitted to a private substation proposed in the northeast corner of the site, adjacent to an existing 92 kilovolt (kV) "R-Line" transmission line. The substation would be dedicated to IID for operation. The solar farm is proposed to be connected to the R-Line with an interconnection agreement with IID. The R-Line runs aboveground and connects to the existing San Felipe Substation, located approximately 2.1 miles northwest of the proposed point of interconnection. Long-term access to the solar farm would be provided from Split Mountain Road via an existing 24-foot-wide all-weather road (graded to 28 feet in width) over a 40-foot-wide private access utility easement. A series of all-weather fire access roads of a minimum 24-foot width (unsurfaced yet covered with a binding agent) would be provided within the Project footprint to meet design requirements of the San Diego County Fire Authority for emergency access to the site. Additionally, a series of unsurfaced roads would be provided within the solar array field to support routine maintenance. A breakaway fence would surround the entire solar racking system to limit human access while still allowing flood flows.

The Project plans to be constructed beginning January 4, 2021 and is anticipated for completion within 15 months of the start of development, approximately on March 31, 2022. All work will be performed within the desert open space.

**V. Project Location**

The Project area is south of the town of Ocotillo Wells, San Diego County, California. The Project site is located directly south of the Ocotillo Wells State Vehicular

Recreation Area and State Route 78, east of the Anza-Borrego Desert State Park, west of State Route 86, and north of the town of Ocotillo. The Project site is located within privately held lands within unincorporated desert open space and is approximately five miles south of the Seville First Solar Farm. The site is within Section 36, T12S / R8E, (33.08031/ -116.08771), San Bernardino Meridian. Maps showing the Project location are found in Attachment A of this Order.

## **VI. Project Impact and Receiving Waters Information**

The Project is located within the jurisdiction of the Colorado River Basin Water Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) and other plans and policies which may be accessed online at: [http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/). The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state/U.S., water quality objectives to protect those uses, and the state and federal antidegradation policies.

Project impact and receiving waters information can be found in Attachment B. Table 1 of Attachment B shows the receiving waters and beneficial uses of waters of the U.S. impacted by the Project. Individual impact location and quantity is shown in Table 2 of Attachment B.

## **VII. Description of Direct Impacts to Waters of the U.S.**

The Project includes several activities that would take place within, and therefore be considered permanent impacts to, waters of the U.S. Such activities include the construction of the solar panel racking system, installation of the equipment pads, the development of several all-weather roads for emergency access, the development of several unsurfaced roads within the solar array field to support routine maintenance, and the installation of a breakaway fence surrounding the entire solar racking system. These impacts are not considered significant as the site currently contains exposed soil that frequently experiences extensive and illegal off-road vehicle (OHV) use. Riders visiting the Ocotillo Wells State Vehicular Recreation Area often use the existing washes as makeshift "highways" due to lack of barriers and obstacles to such OHV travel throughout the site and surrounding vicinity. Therefore, following Project construction, mitigation will consist of rehabilitation and preservation of jurisdictional waters on nearby Imperial County parcels, as described in the Habitat Mitigation and Monitoring Plan for the Ocotillo Wells Solar Farm.

Total Project fill/excavation quantities for all impacts are summarized in Table 1.

**Table 1: Total Project Fill/Excavation Quantity to Stream Channels**

<b>Temporary Impact<sup>1</sup></b>	<b>Permanent Impact - Physical Loss of Area</b>	<b>Permanent Impact - Degradation of Ecological Condition Only</b>
---	2.08 acres 24,354 linear feet	---

**VIII. Compensatory Mitigation**

The Permittee has agreed to provide compensatory mitigation for permanent impacts to 2.08 acres of jurisdictional dry wash at nearly a 1:1 ratio.

**IX. California Environmental Quality Act (CEQA)**

On May 24, 2013, San Diego County, as lead agency, adopted a mitigated negative declaration (MND), State Clearinghouse (SCH) No. 2013041078, for the Project. As a responsible agency, the Colorado River Basin Water Board has reviewed and considered the environmental document and finds that it addresses the Project's water resource impacts. (Cal. Code Regs., tit. 14, § 15096, sub (f).) Pursuant to CEQA, the Colorado River Basin Water Board has made Findings of Facts (Findings) supporting the issuance of this Order, which are included in Attachment C.

**X. Petitions for Reconsideration**

Any person aggrieved by this action may petition the State Water Resources Control Board (State Water Board) to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

**XI. Fees Received**

An application fee of \$1,949 and project fee of \$36,134 were received on June 5 2020. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (fee code 84).

**XII. Conditions**

The Colorado River Basin Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the

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<sup>1</sup> Includes only temporary direct impacts to waters of the state and does not include upland areas of temporary disturbance which could result in a discharge to waters of the state. Temporary impacts, by definition, are restored to pre-project conditions and therefore do not include a physical loss of area or degradation of ecological condition.

watershed of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

#### **A. Authorization**

Impacts to waters of the U.S. shall not exceed quantities shown in Table 1.

#### **B. Reporting and Notification Requirements**

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment E, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment E, which must be signed by the Permittee or an authorized representative.

##### **1. Project Reporting**

###### **a. Monthly Reporting:**

The Permittee must submit a Monthly Report to the Colorado River Basin Water Board on the 15<sup>th</sup> day of each month for the duration of the construction phase. Monthly reporting shall continue until the Colorado River Basin Water Board issues a Notice of Project Complete Letter to the Permittee.

###### **b. Annual Reporting:**

The Permittee must submit an Annual Report including activities conducted for the previous fiscal year (July 1 – June 30) to the Colorado River Basin Water Board each year on the 1<sup>st</sup> of September. Annual Reports must be submitted even if Project construction has not begun. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Permittee.

###### **c. Other Reporting:**

If pollutants are observed in surface water, the Permittee shall submit a report to the Colorado River Basin Water Board within 30 days after encountering the pollutants and describe actions taken to correct the problem and provide photographic documentation that supports the information in the report.

If repairs are required, the Permittee shall take pictures of the area where work needs to take place, documenting the before and after conditions of the area; and shall maintain a daily log for each site where work is taking place pursuant to this Order, while the Permittee conducts its repair activities. The log shall:

- Provide a general description of the repair work;
- Specify the date and daily starting and ending time for the repair work;
- Note key weather conditions (e.g., temperature, wind speed and direction, precipitation, if any);

- Include notes from visual observations regarding the presence/absence of construction debris/trash (e.g., discarded filter fiber) and used oil (e.g., oil that leaks from construction equipment) in the area where the work has taken place.

**Within 30 days following completion of all repair work**, the Permittee shall submit to the Colorado River Basin Water Board a summary report of the key daily log entries. The summary report shall include the above-mentioned before and after pictures of the conditions of the area and shall be signed by the Permittee's Project Manager.

## 2. Project Status Notifications

### a. Commencement of Construction:

The Permittee shall submit a Commencement of Construction Report at least seven days prior to start of initial ground disturbance activities.

### b. Request for Notice of Completion of Discharges Letter:

The Permittee shall submit a Request for Notice of Completion of Discharges Letter following completion of active Project construction activities, including any required restoration and permittee-responsible mitigation. This request shall be submitted to the Colorado River Basin Water Board staff within 30 days following completion of all Project construction activities. Upon acceptance of the request, Colorado River Basin Water Board staff will issue a Notice of Completion of Discharges Letter to the Permittee which will end the active discharge period and associated annual fees.

### c. Request for Notice of Project Complete Letter:

The Permittee shall submit a Request for Notice of Project Complete Letter when construction and/or any post-construction monitoring is complete,<sup>2</sup> and no further Project activities will occur. This request shall be submitted to Colorado River Basin Water Board staff within 30 days following completion of all Project activities. Upon approval of the request, the Colorado River Basin Water Board staff shall issue a Notice of Project Complete Letter to the Permittee which will end the post discharge monitoring period and associated annual fees.

## 3. Conditional Notifications and Reports:

The following notifications and reports are required as appropriate.

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<sup>2</sup> Completion of post-construction monitoring shall be determined by Colorado River Basin Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

**a. Accidental Discharges of Hazardous Materials:<sup>3</sup>**

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- i. As soon as the (A) the Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures, then:
  - first call – 911 (to notify local response agency)
  - then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
  - Lastly, follow the required OES procedures as set forth in:  
[http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill Booklet Feb2014 FINAL BW Acc.pdf](http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)
- ii. Following notification to OES, the Permittee shall notify the Colorado River Basin Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- iii. Within five working days of notification to the Colorado River Basin Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.

**b. Violation of Compliance with Water Quality Standards:**

The Permittee shall notify the Colorado River Basin Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.

- i. Examples of noncompliance events include lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state/U.S., and water contact with uncured concrete.

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<sup>3</sup> "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Saf. Code, § 25501.)

- ii. This notification must be followed within three working days by submission of a Violation of Compliance with Water Quality Standards Report.

**c. In-Water Work:**

- i. The Permittee shall notify the Colorado River Basin Water Board at least 48 hours prior to initiating work in water or stream diversions. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- ii. Within three working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to Colorado River Basin Water Board staff.

**d. Modifications to Project:**

Project modifications may require an amendment of this Order. The Permittee shall give advance notice to Colorado River Basin Water Board staff if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state or federal regulatory authority by submitting a Modifications to Project Report. The Permittee shall inform Colorado River Basin Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order.

**e. Transfer of Property Ownership:**

This Order is not transferable in its entirety or in part to any person or organization except after notice to the Colorado River Basin Water Board in accordance with the following terms:

- i. The Permittee must notify the Colorado River Basin Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Permittee and purchaser must sign and date the notification and provide such notification to the Colorado River Basin Water Board at least 10 days prior to the transfer of ownership.
- ii. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

**f. Transfer of Long-Term BMP Maintenance:**

If maintenance responsibility for post-construction best management practices (BMPs) is legally transferred, the Permittee must submit to the Colorado River Basin Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that

complies with manufacturer or designer specifications. The Permittee must provide such notification to the Colorado River Basin Water Board with a Transfer of Long-Term BMP Maintenance Report at least 10 days prior to the transfer of BMP maintenance responsibility.

## C. Water Quality Monitoring

### 1. General:

If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).

### 2. Accidental Discharges/Noncompliance:

Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, Colorado River Basin Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

### 3. In-Water Work or Diversions:

For projects involving planned work in water or stream diversions, a water quality monitoring plan shall be submitted to Colorado River Basin Water Board staff for acceptance at least 30 days in advance of any discharge to the affected water body. Water quality monitoring shall be conducted in accordance with the approved plan.

Sampling shall be conducted in accordance with Table 2 sampling parameters.<sup>4</sup>

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<sup>4</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations part 136; where no methods are specified for a given pollutant, the method shall be approved by Colorado River Basin Water Board Executive Officer. Grab samples shall be taken between the surface and mid-depth and not be collected at the same time each day to get a complete representation of variations in the receiving water. A hand-held field meter may be used, provided the meter utilizes a U.S. EPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

**Table 2: Sample Type and Frequency Requirements**

Parameter	Unit of Measurement	Type of Sample	Minimum Frequency
Oil and Grease	N/A	Visual	Continuous
Dissolved Oxygen	mg/L and % saturation	Grab	Every 4 hours
pH	Standard Units	Grab	Every 4 hours
Turbidity	NTU	Grab	Every 4 hours
Temperature	°F (or as °C)	Grab	Every 4 hours

**4. Post-Construction:**

The Permittee shall visually inspect the Project site during the rainy season for five years to ensure excessive erosion, stream instability, or other water quality pollution is not occurring in or downstream of the Project site. If water quality pollution is occurring, the Permittee shall contact the Colorado River Basin Water Board staff member overseeing the Project within three working days. The Colorado River Basin Water Board may require the submission of a Violation of Compliance with Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

**D. Standard**

1. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, title 23, chapter 28, article 6 commencing with section 3867. Additionally, the Colorado River Basin Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Permittee, if the Colorado River Basin Water Board determines that: the Project fails to comply with any of the conditions of this Order; or, when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). For purposes of Clean Water Act section 401(d), the condition constitutes a limitation necessary to ensure compliance with water quality standards and appropriate requirements of state law.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Permittee.
4. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. For purposes of Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

#### **E. General Compliance**

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
2. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plan by the Colorado River Basin Water Board or in any applicable State Water Board water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
3. In response to a suspected violation of any condition of this Order, the Colorado River Basin Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. Additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
4. The Permittee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Permittee submittals.
5. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project. For purposes of Clean Water Act section 401(d), this condition constitutes a limitation necessary to ensure compliance with the water quality standards and other pertinent requirements of state law.

6. The Permittee shall adhere to all requirements in the mitigation monitoring and reporting program (MMRP) of the MND, which is incorporated herein by reference and any additional measures as outlined in Attachment C, CEQA Findings of Fact.
7. **Construction General Permit Requirement:** The Permittee shall maintain compliance with conditions described in, and required by, the *National Pollutant Discharge Elimination System (NPDES) Statewide Storm Water Permit Waste Discharge Requirements (WDRs) for the State of California Department of Transportation* (Order No. 2012-0001-DWQ; NPDES No. CAS000003).

## F. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment D of this Order.
2. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a “take” will result from any act authorized under this Order held by the Permittee, the Permittee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
3. The Permittee shall grant Colorado River Basin Water Board staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
  - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
  - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
  - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
  - d. Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the

Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.

5. A copy of this Order must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.
6. **Lake and Streambed Alteration Agreement:** The Permittee shall submit a signed copy of the Department of Fish and Wildlife's lake and streambed alteration agreement to the Colorado River Basin Water Board immediately upon execution and prior to any discharge to waters of the U.S.

## G. Construction

### **Good Site Management “Housekeeping”**

1. The Permittee shall follow good site management “housekeeping” and implement erosion control, sediment control, and other construction-related best management practices (BMPs) depicted in Table 3 below.
2. A qualified biological monitor shall be on site during all ground-disturbing activities (work area preparation, grading, clearing, grubbing, trenching, construction, and decommissioning activities) to prevent impacts to special-status species and other biological resources, as well as document and report any construction-related incidences.
3. The area of vegetation and soil disturbance shall be restricted to the smallest extent possible.
4. After completing construction activities, any disturbed areas shall be restored to pre-existing contours and conditions to the extent feasible.

**Table 3: BMPs**

Type of BMP	BMP	Application
Construction BMPs	Erosion control	Implement erosion control BMPs to mitigate soil erosion, minimize soil loss from wind erosion, and to reduce air pollution during construction activities for all disturbed areas. Examples: mulch, straw, wood chips, soil application, lot perimeter protection per county standards, bonded fiber matrix or stabilized fiber matrix, physical stabilization erosion control blanket.
	Velocity reduction	Implement velocity reduction BMPs to reduce water/runoff velocity. Examples: energy dissipater outlet protection.

**Table 3: BMPs**

Type of BMP	BMP	Application
	Sediment control	Implement sediment control BMPs to remove sediment loads from runoff generated within the construction site for all disturbed areas. Examples: silt fence, fiber rolls, gravel bags, dewatering filtration.
	Off-site sediment tracking control	Implement off-site sediment tracking control BMPs for reducing the transport of sediment on tires off of and within construction site. Examples: stabilized construction entrance, construction road stabilization, entrance/exit tire wash, entrance/exit inspection and cleaning facility.
	General site and materials management	Implement general site and materials management BMPs for materials and waste management. Examples: material delivery and storage management, spill prevention and control, concrete waste management, solid waste management, sanitary waste management, hazardous waste management.
Low Impact Development (LID)	Conservation of natural drainages	Implement LID BMPs to conserve natural drainages. Examples: minimize disturbances of natural areas, construct in least environmentally sensitive areas.
	Minimize disturbances to natural drainages	Implement LID BMPs to minimize disturbances to natural drainages. Examples: avoid disturbing natural swales and topographic depressions, construction setback from creeks.
	Minimize impervious surfaces	Implement LID BMPs to reduce impervious surfaces through efficient site design. Examples: preserve existing vegetation, permeable roads with minimum widths.
	Minimize soil compaction	Implement LID BMPs to minimize soil compaction. Examples: protect native soil and vegetation from construction equipment.
	Drain runoff from impervious surfaces to pervious areas	Implement LID BMPs to drain runoff from impervious surfaces to pervious areas.
	Hydrologic design	Implement LID BMPs for optimizing hydrologic design. Examples: infiltration tranches or basins, depression areas for infiltration, bio-filters such as vegetated or rock swales.
	Permeable pavement design	Implement LID BMPs using permeable pavement design. Examples: pervious concrete, permeable asphalt concrete/pavers, granular material.
	LID road design	Implement LID BMPs for road design. Examples: permeable roads, reduction of overall road coverage, direct runoff to vegetated swales.
Post-Construction BMPs	Protection of channel banks/manufactured slopes	Implement channel protection BMPs to protect banks of the channels as well as the slopes.

**Table 3: BMPs**

Type of BMP	BMP	Application
	Outlet protection	Implement outlet protection BMPs to reduce discharge/water velocity. Examples: energy dissipater outlet protection, velocity dissipation devices.

**Hazardous Materials**

5. No toxic and/or hazardous materials shall be stored near or within wash/drainage areas. To the extent practicable, these materials shall be stored offsite and placed in appropriate secondary containment.
6. Spoil sites shall not be located where spoil could be washed back into the stream channel or where spoil covers aquatic or riparian vegetation. Any materials placed in seasonally dry portions of the drainage areas that could be washed downstream or could be harmful to aquatic life shall be removed from the streambed prior to inundation by high flows.
7. No fueling or maintenance of equipment or vehicles shall occur adjacent or within the wash/drainage areas.

**Roads**

8. Work and staging areas and temporary access routes shall be sized, located, and flagged to limit potential impacts to natural areas. Previously disturbed areas shall be used to the extent feasible.

**Sediment Control**

9. The Permittee shall implement sediment control BMPs to remove sediment loads from runoff generated within the construction site for all disturbed areas. Examples: silt fence, fiber rolls, gravel bags, dewatering filtration.
10. The Permittee shall implement off-site sediment tracking control BMPs for reducing the transport of sediment on tires off of and within construction site. Examples: stabilized construction entrance/exit tire wash, entrance/exit inspection and cleaning facility.

**Stabilization/Erosion Control**

11. The Permittee shall implement erosion control BMPs to mitigate soil erosion, minimize soil loss from wind erosion, and to reduce air pollution during construction activities for all disturbed areas. Examples: mulch, straw, wood chips, soil application, lot perimeter protection per county standards, bonded

fiber matrix or stabilized fiber matrix, physical stabilization erosion control blanket.

### **Storm Water**

- 12.** Work shall not be conducted during rain events.
- 13.** The Permittee shall develop and implement a Stormwater Pollution Prevention Plan (SWPPP) that complies with the requirements of the State Water Board's Construction General Permit.
- 14.** The Permittee shall implement channel protection BMPs to protect banks of the channels as well as the slopes.
- 15.** The Permittee shall implement outlet protection BMPs to reduce discharge/water velocity. Examples: energy dissipater outlet protection, velocity dissipation devices.

## **H. Compensatory Mitigation for Permanent Impacts<sup>5</sup>**

### **1. Total Required Compensatory Mitigation**

- a. The Permittee is required to provide compensatory mitigation for the authorized permanent loss of 2.08 acres of desert wash by rehabilitating 1.92 acres of jurisdictional waters, which is at a nearly 1:1 mitigation ratio.
- b. Total required, Project-compensatory mitigation information for permanent physical loss of area is summarized in Table 4:

**Table 4: Required Compensatory Mitigation for Permanent Impacts**

Aquatic Res. Type	Comp. Mit. Type <sup>6</sup>	Est. <sup>7</sup>	Re-est.	Reh.	Enh.	Pres.	Unknown
Unnamed ephemeral isolated non-wetland waters	PR	--	--	1.92 ac.	--	--	--

<sup>5</sup> Compensatory mitigation is for permanent physical loss and permanent ecological degradation of a water of the U.S.

<sup>6</sup> Compensatory mitigation type may be: In-Lieu-Fee (ILF); Mitigation Bank (MB); Permittee-Responsible (PR).

<sup>7</sup> Methods of mitigation: establishment (Est.), reestablishment (Re-est.), rehabilitation (Reh.), enhancement (Enh.), preservation (Pres.). Unknown applies to advance credits with an unknown method and or location.

## 2. Compensatory Mitigation Plan

- a. The Permittee agreed to conduct Permittee-responsible compensatory mitigation for the Project and provide compensatory mitigation for impacts to waters of the U.S via rehabilitation of an ephemeral dry wash, as described in the Habitat Mitigation and Monitoring Plan (HMMP) for the Ocotillo Wells Solar Farm. Approximately 1.92 acres (2,825 linear feet) of a dry wash will be decompacted to rehabilitate its drainage capability. The open space immediately upland of the site is proposed for rehabilitation, which entails removing trash, ripping the soil to alleviate compaction, and revegetation with native species to create a one-acre buffer habitat. The mitigation project would preserve the drainage patterns similar to the predevelopment condition by mimicking the natural drainage pathways of the contributing watershed to the maximum extent possible and would not result in substantial erosion. Site preservation and long-term management will be achieved by recording a conservation easement of 0.66 acres, and then developing a resource management plan and providing a non-wasting endowment to fund the resource management plan implementation.
- b. The Permittee shall provide compensatory mitigation for impacts to waters of the state in accordance with approved Compensatory Mitigation Plan described in the HMMP and incorporated herein by reference and approved through the issuance of this Order. Any deviations from, or revisions to, the Compensatory Mitigation Plan must be pre-approved by Water Board staff. The monitoring period shall continue until the Water Board staff determines that performance standards have been met. This may require the monitoring period to be extended. Permittee-Responsible Compensatory Mitigation Responsibility
  - a. The Permittee is responsible for the required compensatory mitigation in perpetuity. However, the Permittee may transfer the compensatory mitigation requirements associated with long-term management when the following conditions have been met:
    - i. Performance standards are met.
    - ii. A Transfer Agreement to a third party has been approved by Colorado River Basin Water Board staff.
    - iii. An endowment fund has been provided by the Permittee to a third party for management in perpetuity of the mitigation plan.
    - iv. A conservation easement, deed restriction, or other appropriate restrictive covenant for the mitigation site has been recorded and approved by Colorado River Basin Water Board staff.

- b. Transfer of Long-Term Permittee-Responsible Compensatory Mitigation and Management Responsibility**
  - i. A transfer agreement shall be submitted from an authorized representative of the new party (transferee) for acceptance by Colorado River Basin Water Board staff. The agreement shall demonstrate acceptance and understanding of the responsibility to comply with and fully satisfy the required compensatory mitigation and long-term management conditions. Failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the Colorado River Basin Water Board under Water Code section 13385, subdivision (a).
  - ii. Notification of transfer of responsibilities meeting the above condition must be provided to the Colorado River Basin Water Board staff. A draft transfer agreement is due to the Colorado River Basin Water Board staff no less than thirty (30) days prior to the transfer of the mitigation responsibility. A final transfer agreement is due to Colorado River Basin Water Board staff within 30 days of the completion of the transfer.

## **I. Mitigation for Temporary Impacts**

The Permittee shall restore all areas of temporary impacts to waters of the U.S. and all Project site upland areas of temporary disturbance which could result in a discharge to waters of the U.S.

**XIII. Water Quality Certification**

I hereby issue the Order for the Ocotillo Solar Project, WDID No. 7B133044001, certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and, (b) compliance with all applicable requirements of statewide water quality control plans and policies and the Colorado River Basin Water Board's Basin Plan and policies.

*Original Signed By*

Paula Rasmussen  
Executive Officer  
Colorado River Basin  
Regional Water Quality Control Board

7/23/2020

Date

**Attachment A** Maps

**Attachment B** Receiving Waters, Impact, and Mitigation Information

**Attachment C** CEQA Findings of Fact

**Attachment D** Signatory Requirements

**Attachment E** Reporting Requirements