

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

**ORDER R5-2015-XXXX  
WASTE DISCHARGE REQUIREMENTS  
FOR  
PANOCH VALLEY SOLAR, LLC  
PANOCH VALLEY SOLAR PROJECT  
SAN BENITO COUNTY**

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

**Discharger**

1. On 4 November 2014, Panoche Valley Solar, LLC (herein Discharger) submitted a federal Clean Water Act (CWA) § 401 Water Quality Certification Application Form and on 30 January 2015, submitted a revised application form to the Central Valley Water Board. The Discharger's application identified its intent to dredge and fill waters of the State to construct and operate a utility-scale, approximate 247 megawatt (MW) alternating current (AC) solar photovoltaic (PV) energy generating facility, known as the Panoche Valley Solar Facility (Project), on private lands in San Benito County, California. Additional information for the revised application was submitted on 9 February and 5 March 2015. The § 401 Water Quality Certification Application Form, as prepared by the Discharger, and the supplemental information is sufficient to meet the requirements for submitting a Report of Waste Discharge (ROWD) for fill of non-jurisdictional waters of the State. The ROWD was deemed complete on 18 March 2015. As described in the findings that follow, this Order regulates discharges of dredge and fill materials to 8.588 acres of federally non-jurisdictional waters of the State.

**Project Location and Description**

2. The site is in the Panoche Valley of eastern San Benito County, approximately two miles north of the intersection of Panoche Road and Little Panoche Road. This location is approximately two miles southwest of the Fresno County Line and the Panoche Hills, and approximately 15 miles west of Interstate 5 and the San Joaquin Valley. The site is within Township 15 South, Range 10 East, Sections 3-4, 8-11, and 13-16 Mount Diablo Base Line and Meridian, in the United States Geologic Survey (USGS) Cerro Colorado, Llanada, Mercy Hot Springs, and Panoche 7.5-minute topographic quadrangle maps (see Attachment A, Figure 1 for a general location map).
3. In 2010, San Benito County (County) approved a conditional Use Permit 1023-09(CUP) to construct and operate a 399-megawatt (MW) solar facility on a 3,202 acre site. In 2014, the County approved an amendment to CUP 1023-09 modifying the 2010 solar facility to reflect a smaller 247-megawatt solar facility on 2,506 acres. The 2010 project would have been constructed in five phases over five years. The revised project (hereafter Project) will be constructed in one phase during approximately 18 months.

4. The Project also includes telecommunication upgrades required by Pacific Gas and Electric Company (PG&E) to serve the project. PG&E is requiring installation of new optical ground wire on its existing Moss Landing–Panoche 230 kilovolt transmission line to establish the primary telecommunication service between the Project switching station and PG&E's existing Panoche Substation, which is located 17 miles east of the Panoche Valley in Fresno County. A figure showing the transmission line route can be found in Attachment A, Figure 2.
5. The Project footprint covers approximately 2,506 acres with 1,794 acres of permanent disturbance for the Project footprint containing the following components: solar arrays, an operations and maintenance building, project perimeter roads including emergency access and egress, electricity collection lines, electrical transformers, DC-AC inverters, an electrical substation and switchyard, and PG&E telecommunication upgrades. Additionally, the Project includes 24,176 acres of preservation lands adjacent to the solar facility, which will be managed through implementation of a Conservation Management Plan. Preserved lands include the Valley Floor Conservation Lands (2,514 acres), Valadeao Ranch Conservation Lands (10,772 acres), and Silver Creek Ranch Conservation Lands (10,890 acres) (see Attachment A, Figure 3 for Project and Conservation Areas).

### **Site Regulation**

6. 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 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 United States and non-jurisdictional waters.
7. 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).
8. On 24 June 2015, the Corps approved a Preliminary Jurisdictional Determination of the Project footprint [originally submitted November 2009, and updated December 2014] that identified a total of 0.39 acres of waters of the United States present on the Project footprint.
9. Based on the Corps-approved determination, the Project will discharge dredged and fill material to 0.122 total acres determined to be waters of the United States that are subject to regulation under federal CWA §401 and § 404. The Central Valley Water Board will

consider separately a CWA § 401 Water Quality Certification for proposed discharges of dredge and fill materials at these locations.

10. The Corps determined in the June 2015 Preliminary Jurisdictional Determination that approximately 14.767 acres of vernal pools, wetlands, and ephemeral drainages on the Project site are non-jurisdictional for purposes of CWA § 404, due to isolation or the nature of the waters not exhibiting ordinary high watermark features (see Table 1). The Central Valley Water Board considers the non-jurisdictional wetlands and drainage areas to be waters of the State subject to regulation under the CWC.

**Table 1. Mapped Features within Project Footprint**

<b>Type of Feature</b>	<b>Linear feet within Project Footprint</b>	<b>Acreage within Project Footprint</b>
Federal Stream Channel	6,801	0.39
State Stream Channel	29,996	14.609
Vernal and Ephemeral Pools	Not Applicable	0.158

11. Construction of the Project will involve the proposed discharge of structural materials and/or earthen materials (fill) in 53 Project locations that are considered non-jurisdictional waters, as shown in Attachment A (Figures 4 and 6), and listed in Attachment B. This Order regulates only those proposed discharges of dredged and fill materials to these non-jurisdictional areas (see Table 2), which are associated with perimeter road crossings, grading, panel and infrastructure installation, and trenching for electrical utilities.

**Table 2. Areas of Impact (Non-jurisdictional waters)**

<b>Type of Feature</b>	<b>Linear feet within Project Footprint</b>	<b>Acreage within Project Footprint</b>
Stream Channels	21,357	8.43
Ephemeral Pools	Not Applicable	0.107
Vernal Pools	Not Applicable	0.051
<b>TOTAL IMPACTS TO STATE WATERS</b>		<b>8.588</b>

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 Tulare Lake Basin, Second Edition, revised January 2004 (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 (Executive Order W-59-93, signed 23 August 1993). 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 in California in a manner that fosters creativity, stewardship, and respect for private property.”

13. This Order does not regulate storm water discharges that may result from the Project during construction, including storm water discharges from mitigation activities on the Conservation Lands. Discharges of pollutants associated with construction-related storm water runoff in the Tulare Lake Basin 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 Orders 2010-0014-DWQ and 2012-0006-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 2014 Supplemental Environmental Impact Report approved by San Benito County on 19 May 2015, and the corresponding mitigation monitoring program adopted by the County.

#### **Site-Specific Conditions**

14. The Project site is located in the northern part of Panoche Valley, a broad alluvial valley in eastern San Benito County. Panoche Valley is about 33 miles southeast of Hollister and 28 miles west of Mendota in Fresno County. The valley is bounded by the Panoche Hills to the east, Griswold Hills and Cerro Bonito to the south, and Las Aguilas Mountains to the northwest. Panoche Valley is drained by Panoche Creek that has cut through the uplifted Panoche and Tumey Hills before reaching the San Joaquin Valley near Interstate 5 and Panoche Road. The environmental setting for the PG&E upgrades includes the area surrounding the Moss Landing–Panoche 230 kV transmission line between the Project site and the Panoche Substation, the Call Mountains (west of the Panoche Valley), Panoche Mountain (east of the Panoche Valley), and the area surrounding the Helm Substation (approximately 13 miles southwest of the City of Fresno).
15. The elevation of Panoche Valley ranges from approximately 1,200 feet above mean sea level at the southeast point to 1,400 feet above mean sea level at the north end. The Project area is located on alluvial fan and fluvial deposits derived from the nearby hills to the northwest, northeast, and south. Soils beneath the Project area include Panhill loam and Panoche loam formed on the alluvial fan surfaces at the base of the Panoche Hills and Panoche sandy loam and Panoche loam in the central Panoche Valley.
16. The Project site has primarily been used for cattle grazing for the past 100 years; however, the site has also been altered by agricultural activities to support cultivation of

a variety of field crops. Aerial photographs show row crop production in the 1940s and 1950s. Cotton was grown extensively in the 1950s and 1960s, and irrigated crops including watermelons, potatoes, turnips, cucumbers, sugar beets, lettuce, and cotton were grown in the project area in the late 1960s and early 1970s. Farmland Mapping and Monitoring Program maps indicate irrigated crop production on 970 acres of the proposed project site until the early 1990s. Heavy livestock grazing and agricultural activity have resulted in alteration and degradation to the drainages within the Project footprint.

17. The Project site is surrounded primarily by grazing activities and some farming. There currently are very few intensive agricultural operations and no industrial operations within the Project region. The Project site is located on relatively flat terrain.
18. The San Benito County General Plan land use designation for all property within the Project footprint is, "Agricultural Rangeland with a zoning designation of Agricultural Rangeland, 40-acre minimum." The Agriculture Rangeland zoning designation includes the development of natural resources together with the necessary buildings, apparatus, or appurtenances incidental thereto as a conditional use (Title 25, Section 29.106 of the San Benito County Code). Adjacent parcels on all sides of the Project are also designated as Agricultural Rangeland.
19. Portions of the PG&E upgrades are within Fresno County and, therefore, subject to the Fresno County General Plan. The relevant Fresno General Plan components for the PG&E upgrades are the Agricultural and Land Use Element and the Open Space and Conservation Element. PG&E is regulated by the California Public Utilities Commission (CPUC). The CPUC has jurisdiction over the siting and design of the PG&E upgrades required for the Project. The PG&E upgrades are exempt from local land use and zoning regulations and permitting; however, pursuant to General Order 131D, Section III.C requirements state that the utility must communicate with and obtain the input of local authorities regarding land-use matters and obtain any nondiscretionary local permits.
20. The Transmission Line Survey Report submitted with the 401 Water Quality Certification Application in November 2014 indicates there are three small unnamed drainages located within the upgraded portion of the PG&E right-of-way; however, there will be no dredged or fill material discharged to waters of the State from the PG&E related work.

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

21. As described in Findings 9 and 11, the Project includes 53 water locations that will be subject to impacts. Total permanent impacts to the non-jurisdictional waters of the State include 8.43 acres of un-vegetated ephemeral streambed, 0.107 acres of

ephemeral pools, and 0.051 acres of vernal pools, which are addressed by this Order, and permanent impacts to waters of the United States include 0.122 acres of ephemeral drainages which will be addressed by CWA §401 and § 404.

22. On 15 June 2015, the Discharger submitted a document entitled draft Wetlands Mitigation and Monitoring Plan (Mitigation Plan). The Mitigation Plan proposes to mitigate for impacts to the total 8.710 acres of both the waters of the United States and waters of the State through the creation, enhancement, and restoration of water features on designated Conservation Lands described below. As described in the Mitigation Plan and Findings 25 to 28 below, the Discharger will provide for the direct creation, enhancement, or restoration of 11.960 acres of drainages, vernal pools, and wetlands by implementing the Mitigation Plan.
23. Additionally, to mitigate for the loss of waters of the State and the United States, the Discharger will preserve a total of 24,176 acres, which will be managed through implementation of a Conservation Management Plan. Preserved lands include the Valley Floor Conservation Lands (2,514 acres), Valadeao Ranch Conservation Lands (10,772 acres), and Silver Creek Ranch Conservation Lands (10,890 acres). The three large parcels of Conservation Lands are contiguous with the Project site and with 86,000 acres of Bureau of Land Management lands. The Discharger will preserve in perpetuity under conservation easement 716,853 linear feet of streams, drainages, and creeks within the Conservation Lands, as shown in Table 3, below, and Attachment A, Figures 5A and 5B.

**Table 3. Summary of Preserved Waters of the State**

<b>Total Linear Feet of Streams, Drainages, &amp; Creeks</b>	
Valley Floor Conservation Lands	81,957
Valadeao Ranch Conservation Lands	326,519
Silver Creek Ranch Conservation Lands	308,377
<b>Total Linear Feet</b>	<b>716,853</b>

24. The Conservation Lands associated with the Project are located within Township 15S, Range 10E, Sections 3-4, 8-10, 13-16, and 25; Township 15S, Range 11E, Section 19; Township 14S, Range 10E, Sections 21-27 and 32-36; Township 14S, Range 11E, Sections 19 and 29-32; Township 15S, Range 10E, Sections 1-8 and 10-14; Section 15S, Township 11E, Sections 6-7, 19-20, and 26-36; and Township 16S, Range 11E, Sections 1-6 and 8-12. The solar facility and all associated land will be located on property under control of the Discharger.

25. The Discharger will create three ponds to support California tiger salamander (CTS) viability on the Valadeao Ranch Conservation Lands northwest of the Project footprint. The total size of the ponds will be approximately 0.31 acres. Additional CTS ponds may be created determined by incidental take of CTS during construction.
26. The Discharger will install exclusionary fencing around a portion of Panoche Creek channel that has been degraded by overgrazing. The Project will restore 11.16 acres of waters of the State within the Panoche Creek channel, including 5.81 acres considered to be jurisdictional waters of the United States
27. The Discharger will enhance approximately 0.050 acres of existing ephemeral pools on the Valley Floor Conservation Lands that have been degraded by overgrazing by seeding the pools with approved native seed mixes or inoculum from vernal pools within the Project footprint that will be impacted.
28. The Discharger will restore approximately 0.44 acres of stream channels in seven locations by removing debris and reseeding the channels.
29. The Mitigation Plan describes detailed activities and plans, performance criteria to measure success, initial monitoring and management actions, and long-term management activities to mitigate for unavoidable impacts to State and Federal waters resulting from construction of the Project. This Order requires the Discharger to proceed with the proposed Mitigation Plan and requires monitoring and adaptive management measures to ensure successful implementation.
30. This Order serves as the Central Valley Water Board approval of the Mitigation Plan.

#### **Basin Plan, Beneficial Uses, and Water Quality Objectives**

31. 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.
32. The Project will affect drainages within the Tulare Lake Basin of the Central Valley Region. Surface waters on the Project site are classified as West Side Streams per the Water Quality Control Plan for the Tulare Lake Basin. The designated beneficial uses of West Side Streams are Agricultural Supply; Groundwater Recharge; Industrial Service Supply; Industrial Process Supply; Rare, Threatened, or Endangered Species Habitat; Water Contact Recreation; Noncontact Water Recreation; Warm Freshwater Habitat; and Wildlife Habitat.
33. The Project site is situated atop the Panoche Valley Groundwater Basin. This groundwater basin's only designated beneficial use is "Municipal and Domestic Supply",

or MUN. MUN-designated waters are managed for "...uses of water for community, military, or individual water supply systems, including but not limited to drinking water supply."

### **Antidegradation Analysis**

34. 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 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.
35. As described below, the permitted discharges will be controlled through the requirements herein as well as the implementation 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 anticipated beneficial uses.*

While the permitted discharges will cause degradation (by and through fill and removal) with respect to the waters that are proposed to be filled, the filling of these waters will be mitigated by the creation, enhancement, restoration, and preservation of waters on three large conservation lands. The Discharger will also be required to conduct monitoring and reporting to ensure success at the mitigation sites as described in Monitoring and Reporting Program R5-2015-XXXX. With respect to waters other than those proposed to be filled as part of the Project, this Order ensures that present and anticipated 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 anticipated 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 six offsite alternatives and nine onsite alternative project designs were proposed for the Project. A CWA § 404(b)(1) alternatives analysis that examined the alternative project locations and onsite avoidance and minimization measures was prepared to document the Discharger's planning process. The analysis concluded the proposed Project is the least damaging practicable alternative.

The Discharger will implement an integrated mitigation plan to compensate for the impacts to drainages and associated threatened and endangered species habitats that would result from the Project. The mitigation plan incorporates enhancement and restoration of waters, preservation of existing habitats, and management of the preserved habitats to maximize wetland function and wetland restoration and prevent future degradation. The mitigation plan is designed to assure that there will be no net loss and an increase in function to waters of the State.

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 San Benito. Specifically, the Project will:

- i. provide economic and tax basis benefits for an economically disadvantaged region and generate significant and needed economic output in the County, including positive fiscal impacts to the County's operating funds;
- ii. generate approximately 550 construction jobs over the construction period;
- iii. provide the State and County with renewable energy generation and reduction in the use of fossil fuels;

- iv. reduce energy costs to California ratepayers by approximately \$500,000,000 through qualification for the Federal Investment Tax Credit;
- v. through the sale of the power generated by the Project, help in meeting the statewide renewable generation goals; and
- vi. add approximately 24,176 acres of land into conservation located adjacent to Bureau of Land Management lands, resulting in approximately 110,000 acres of high value habitat with coordinated management.

36. Given finding 35 (a-d), the proposed discharges authorized herein comply with Resolution 68-16.

### **CEQA**

37. The County of San Benito, acting as the California Environmental Quality Act (CEQA, Public Resources Code § 21000, et seq.) Lead Agency, certified the Final Environmental Impact Report (FEIR) on 10 November 2010. A Notice of Determination was filed with the State Clearinghouse on 22 November 2010. Subsequently, on 19 May 2015, the County of San Benito certified a Supplemental EIR (SEIR) to reflect changes to the previously certified project. A Notice of Determination was filed with the County of San Benito on 20 May 2015, with Fresno County on 22 May 2015, and the State Clearinghouse on 11 June 2015.
38. Following certification of the SEIR, the County of San Benito 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 SEIR were related to aesthetics and construction noise.
39. The SEIR 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.
40. The Central Valley Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations (CCR), title 14 § 15096, reviewed both the Notice of Preparation of the FEIR and SEIR, and the FEIR and SEIR for the Project, and submitted comments to the County of San Benito accordingly. The Central Valley Water Board also evaluated the potentially significant impacts resulting from the fill of drainages and related mitigation measures identified in the FEIR and SEIR. Mitigation measures imposed on the Project in the FEIR and SEIR to ensure that impacts resulting from the fill of drainages are less than significant are summarized in Attachment C. The mitigation measures identified in the FEIR and SEIR, supplemented with the provisions

in this Order, are adequate to reduce potentially significant impacts resulting from the dredge and fill of waters to less than significant levels.

### **General Findings**

41. 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.
42. The Central Valley Water Board will review this Order periodically and will revise requirements when necessary.
43. 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.
44. The technical reports required by this Order and the attached Monitoring and Reporting Program R5-2015-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**

45. 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.
46. 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. A Notice of Public Hearing was distributed to interested parties on 20 May 2015.
47. 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), Panoche Valley Solar, a Limited Liability Company 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 or identified in 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 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 water quality certification for the Panoche Valley Solar Project, 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 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 and Supplemental 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 **R5-2015-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 Wetlands Mitigation and Monitoring Plan (WMMP), dated June 2015, as final for the purposes of this Order. Any proposed modifications to the plan must be **submitted to the Executive Officer for approval 30 days** prior to implementation. The Discharger shall not implement the proposed changes until it obtains written approval from the Executive Officer.
5. The Discharger must implement the measures described in the WMMP as summarized in Findings 23, and 25 to 28. Initial construction of the compensatory mitigation for discharge of fill to waters of the State must be completed **within 1 year of initial impacts** to waters of the State. **Within 30 days** of initial completion of the compensatory mitigation sites, the Discharger shall submit complete sets of as-built plans for the sites to the Executive Officer for review.
6. All areas used to mitigate for permanent impacts to waters of the State must be protected in perpetuity from land-use and maintenance activities that would threaten water quality or beneficial uses within the preservation area. **Prior to initiating grading within waters of the State**, the Discharger shall submit a draft conservation easement for the Valley Floor, Valadeao Ranch, and Silver Creek Ranch Conservation

Lands to the Central Valley Water Board's Executive Officer for review and acceptance as consistent with the provisions within the WMMP that relate to Central Valley Water Board requirements. The language of the conservation easement must 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 easement 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 State Water Resources Control Board and Central Valley Water Board staff. The conservation easement must also specify the purposes for which it is established and include a list of prohibited activities that are inconsistent with the maintenance of the preservation areas, such as development, dredging, mowing, and/or other nonemergency activities that would result in permanent or temporary disturbance of the preservation area.

7. **Prior to initiating grading within waters of the State**, the Discharger shall provide to the Central Valley Water Board's Executive Officer evidence that funding for monitoring and perpetual management and maintenance of the mitigation features and habitat in the conserved preservation areas has been provided for in perpetuity. The principal in the endowment should generate sufficient revenue to cover the costs described in the Monitoring and Reporting Program R5-2015-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.
8. **No less than 14 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 compensatory mitigation creation, enhancement and restoration activities.
9. The mitigation areas on the Conservation Lands must fully meet the established functional success criteria of the WMMP by **no later than 5 years** from the date that the as-built plans for the mitigation areas 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. 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.

11. Any and all monitoring reports required by this Order are required pursuant to CWC § 13267.
12. The Discharger must attach a signed, certified cover letter to all monitoring reports provided to the Central Valley Water Board. The certified cover letter must 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 must include a description of the violation.
13. 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 \$10,000 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 Board to review the action in accordance with CWC § 13320 and CCR, title 23, § 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

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

or will be provided upon request.

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 \_\_\_\_\_.

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PAMELA C. CREEDON, Executive Officer

- Order Attachments:
- A. Location Map and Project Area Figures
  - B. Dredge and Fill Location Identification Number and Attributes
  - C. CEQA Mitigation Measures

Monitoring and Reporting Program R5-2015-XXXX

Information Sheet

Standard Provisions for Waste Discharge Requirements (1 March 1991)