

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

STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 1-2, 2012
Prepared on December 15, 2011

ITEM NUMBER: 14

SUBJECT: Waste Discharge Requirements, Order No. R3-2012-0006, for California Valley Solar Ranch Discharges of Fill Material to Waters of the State, San Luis Obispo County

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KEY INFORMATION:

Location: Approximately 60 miles east of San Luis Obispo along Highway 58
Owner/Operator: High Plains Ranch II LLC (Discharger)
Type of Waste: Fill Material
Existing Orders: None – new facility
WDID and Place No: 3401011421 / 775501

This Action: Adopt Waste Discharge Requirements Order No. R3-2012-0006 and Monitoring and Reporting Program No. R3-2012-0006

SUMMARY

Central Coast Regional Water Quality Control Board (Water Board) staff proposes Individual Waste Discharge Requirements Order No. R3-2012-0006 (Order or Order No. R3-2012-0006) for the California Valley Solar Ranch Discharges of Fill Material to Waters of the State (Project). The Project will permanently and temporarily impact ephemeral drainages, wetlands, and non-federal waters with discharges of fill associated with the construction of the California Valley Solar Facility (Solar Facility).

The Project site is bisected by State Route 58, fifty-six miles east of the City of San Luis Obispo and fifty-two miles southeast of Paso Robles. Natural topography on the site is generally flat with rolling hills and narrow, long fault scarps. The Project site occurs within the arid Carrizo Plain Hydrologic Unit and drains to Soda Lake, a terminal basin approximately three miles to the south.

Water Board staff is proposing a separate Order (Board Item 15 Proposed Order No. R3-2011-0225) for Class II Surface Impoundments for the Project. Under Proposed Order No. R3-2011-0225, the Discharger will build a reverse osmosis water treatment facility (surface impoundments) to supply potable water and fire protection water for a solar photovoltaic power plant. The Discharger will treat groundwater using reverse osmosis and will discharge brine to the surface impoundments.

Separate WDRs are proposed because the waste discharge associated with the class II surface impoundments is significantly different (potential groundwater impacts from brine discharges) than the waste discharges associated with the fill materials (potential wetlands impacts from facility construction). The surface impoundments are located outside the 100-year flood plain, must meet or exceed requirements in California Code of Regulations Title 27, and will continue during the entire operating life of the Solar Facility. The discharges of fill material are located within ephemeral drainages and wetlands, are subject to regulation under California Water Code Section 13263(a), and conclude at the end of the three-year Solar Facility construction period. The differences make the adoption of separate Orders necessary to allow Water Board staff to efficiently permit the projects to protect water quality and beneficial uses.

DISCUSSION

The Discharger submitted a report of waste discharge on April 11, 2011, to facilitate the issuance of an Individual WDR to authorize the discharge fill material to Waters of the State. The Discharger proposes to construct the Project on a portion of a 4,956 acre rangeland property at the northeastern fringe of the Carrizo Plain in eastern San Luis Obispo County. Under proposed Order No. R3-2012-0006.

This Discharger is compensating for the proposed Project's impacts through avoidance, minimization, and mitigation, consistent with the State Wetlands Conservation Policy (Executive Order W-59-93). The Project's design includes avoidance and minimization; 3,537 acres or 71% of the 4,956 acre project footprint will be either left undisturbed or temporarily impacted, and then restored to pre-Project conditions. The avoidance includes the permanent preservation of 19.9 acres of drainages and ponds and 50.8 acres of wetlands. The Discharger will permanently impact 0.26 acres of wetlands and waters of the State as a result of filling a man-made pond located in an abandoned gypsum mine and shallow seasonal wetlands existing on alkaline scalds. The Discharger will also permanently and temporarily impact 0.03 and 0.02 acres respectively of ephemeral drainages due to the constructing nine road crossings, installing array security fencing, and trenching for utilities. The impacted drainages are ephemeral and small in width and depth, with cross sections that are gently sloping and low relief. The drainages exist on parcels that are actively grazed by cattle and have been used as rangeland for more than a decade, with a past history of dry-farming. The Discharger will mitigate for the 0.31 acres of impacts by restoring wetland habitat at a two to one ratio on a 995 acre property located three miles to the west of the Project area. The proposed Order and MRP provide a detailed project description, mitigation, and monitoring requirements for the Project.

Discharges of dredged and fill material are typically authorized through the Clean Water Act Section 401 Water Quality Certification permitting process. On December 6, 2010 the United States Army Corps of Engineers (USACE) disclaimed all waters on the Project site as waters of the United States. Therefore, fill activities associated with the Project are subject to permitting from the State, but not the USACE.

The Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the USACE to be Outside of Federal Jurisdiction (General Order) Water Quality Order No. 2004-004-DWQ provides a mechanism for projects in non-federal jurisdictions to receive authorization for dredge and fill activities. The full Project does not qualify for enrollment under the General Order, since eligible projects are restricted to dredged or fill discharges of no more than two-tenths (0.2) of an acre and 400 linear feet.

On August 24, 2011 the Water Board's Executive Officer provided approval for the Discharger to commence with limited Project activities under the General Order. The Executive Officer granted this approval to allow the Project to meet scheduling requirements related to Federal funding for the Project. Enrollment under the General Order limits impacts from fill activities to no more than 0.182 of an acre and 345 linear feet. The Discharger commenced with Project activities in early September 2011. The proposed Order contains requirements for both the discharges of fill currently covered under the General Order and those not already covered under the General Order.

PROPOSED ORDER

The proposed Order requires the Discharger to comply with provisions of the Water Board's Basin Plan, implement erosion control measures, and mitigate for the Project's impacts to wetlands and drainages by restoring wetland habitat at a two to one ratio. The proposed Order prohibits the Discharger from destabilizing a channel or bed of a receiving water, dewatering or diverting any waterways, or causing adverse environmental impacts.

PROPOSED MONITORING AND REPORTING PROGRAM

The proposed Monitoring and Reporting Program (MRP) includes the following sections:

Monitoring: This section requires the Discharger to conduct photo monitoring and to visually inspect impact areas authorized under the proposed Order during active construction and for five years following completion of construction activities. The Discharger must also conduct visual monitoring of the Array Security Fence for trash, debris, and erosion during active construction and for five years after construction completion. The Discharger will conduct site visits of the mitigation area at least once every three months during establishment of the wetlands vegetation and at least once per year for five years after the wetlands have been established or until the success criteria has been met, whichever occurs later. The purpose of the monitoring is to provide the Discharger and the Water Board with information to determine if Project implementation activities are meeting all conditions of the proposed MRP and Order, and to guide the Discharger in modifying management practices should they observe adverse conditions or non-compliance.

Reporting: This section requires the Discharger to retain and maintain records and provide them upon request to Water Board staff. The Discharger is also required to notify Water Board staff should Project activities not meet the conditions of the proposed Order and MRP and to correct the non-compliant activities. In addition, this section requires the Discharger to provide Water Board staff with annual reports that include monitoring results for the Project and mitigation areas during active construction and for five years after the conclusion of active construction. The Discharger also must submit a project completion report within thirty days of project completion.

Amendment Requests: This section requires the Discharger to submit any request for amendment of the approved MRP in writing to the Water Board's Executive Officer.

INSPECTION

On November 15, 2011, Water Board staff Julia Dyer, Environmental Scientist and Phil Hammer, Senior Environmental Scientist conducted a field inspection of the Project area. The inspection included a thorough review of all current and proposed crossings and construction

areas, including the active construction area and proposed mitigation site. Water Board staff determined that the Discharger's management of the site is protective of water quality. Water Board staff concluded that the proposed activities associated with the Project pose a minimal risk of adverse impacts to water quality and beneficial uses. Water Board staff's conclusion is based on the Discharger's thorough and proactive management of the Project site, the arid climate, mild terrain, and the minor nature of the waters the Project will impact.

ENVIRONMENTAL SUMMARY

The proposed Order and MRP contain prohibitions, discharge specifications, water quality protection standards, and provisions that, if implemented properly, will protect the environment by mitigating or avoiding impacts to Waters of the State.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

PUBLIC NOTICE AND COMMENTS ON ORDER NO. R3-2012-0006

Water Board staff distributed the draft Order No. R3-2012-0006 and MRP No. R3-2012-0006 on November 3, 2011, to a list of interested parties, agencies, and surrounding landowners that have been involved with the California Valley Solar Ranch development. Upon the conclusion of the 30-day public comment period, the Water Board did not receive any comments on the proposed Order and MRP.

MODIFICATION AND CLARIFICATION

The Discharger requested two minor administrative modifications to the proposed Order and MRP, since the public notice period commenced on November 3, 2011. The original public notice reported the proposed project as located on a 4,990 acre property owned by High Plains Ranch II LLC, a subsidiary of the SunPower Corporation.

The Discharger has, since commencement of the public notice period, reduced the property area by thirty-four acres to 4,956 acres. Also, NRG Solar purchased both the Project and High Plains Ranch II LLC from SunPower. The owner is now reported as High Plains Ranch II LLC. These modifications are reflected in this staff report, proposed Order, and MRP.

Water Board staff, since commencement of the public notice period, modified the MRP to clarify monitoring and reporting requirements. Water Board staff modified the MRP to clarify it will apply during the active construction period and for five years following the conclusion of active construction. Additionally, Water Board staff clarified that during the five years of post-construction monitoring, the Discharger must conduct visual and photo monitoring during the first three rain events that produce 0.5 inches of rain or more, and must conduct one dry season inspection. If the project area does not receive three rain events producing 0.5 inches of rain or more, the Discharger must inspect the Project area at least four times per year.

CONCLUSION

The proposed Order and MRP provide implementation, monitoring, and reporting requirements for the California Valley Solar Farm dischargers of fill material to Waters of the State. These requirements are met through project-specific provisions and restrictions, preventative inspections, monitoring, and reporting. If implemented in compliance with the proposed Order and MRP, the Project's proposed activities will protect water quality and beneficial uses.

RECOMMENDATION

Adopt Waste Discharge Requirements Order No. R3-2012-0006 with Monitoring and Reporting Program No. R3-2012-0006.

ATTACHMENTS

1. Proposed Order No. R3-2012-0006 and Exhibits
2. Proposed Monitoring and Reporting Program No. R3-2012-0006

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