



# California Regional Water Quality Control Board

## Colorado River Basin Region



Linda S. Adams  
Secretary for  
Environmental Protection

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Arnold Schwarzenegger  
Governor

December 8, 2010

Mr. Marc C. Van Patten  
1001 McKinney Street, Suite 1730  
Houston, TX 77379

Dear Mr. Van Patten:

**SUBJECT: ORDER FOR RESCISSION AND REISSUANCE OF TECHNICALLY-  
CONDITIONED CLEAN WATER ACT SECTION 401 WATER QUALITY  
CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL  
MATERIALS**

It is my understanding that you recently contacted Jay Mirpour of my staff of the Colorado River Basin Regional Water Quality Control Board, who is assigned to handle 401 WQCs, to request that the name of the "Applicant" identified in the 401 Water Quality Certification (WQC) issued on October 14, 2010, to "Tessera Solar North America, Inc." be changed to "Imperial Valley Solar, LLC." You explained to Mr. Mirpour that the error was made when your company submitted the application for 401 WQC to our office.

I also understand that our Board's staff counsel, Tom Vandenberg, explained to you that to correct the applicant's name, our Board would first need to rescind the 401 WQC with the incorrectly identified applicant and then issue a new 401 WQC with the applicant's name you requested. Mr. Vandenberg also explained that I have the authority, as the Board's Executive Officer, to take all actions connected with applications for certification, including issuance and denial of certification. (Cal. Code Regs., tit. 23, § 3838.) You also provided Mr. Vandenberg with a copy of a certificate of amendment of "SES Solar TWO LLC", changing its name to "Imperial Valley Solar, LLC," filed on February 23, 2010, with the Secretary of State, State of Delaware, to document that the name change met legal requirements.

Because my authority is limited to "tak[ing] all actions connected with applications for certification," I will interpret your request to correct the Applicant's name as a revision of your application, even though the subject certification has already been issued. This is a reasonable interpretation of the scope of my authority in this particular circumstance since I view your request as non-substantive for several reasons. First, all conditions of certification remain unchanged. Second, no comments were received when the original and updated Applications for Certification were posted for public comment. Finally, and most importantly, Imperial Valley Solar, LLC's corporate parent is Tessera Solar North America, Inc. Thus, the legal obligations imposed by the 401 WQC are not being shifted to a new and legally unrelated Applicant, which would require the submittal of a new Application for Certification. Instead, the requested name change, as you explained, is simply intended to make clear the relationship between the solar energy project and the legal business entity that will benefit from the project.

*California Environmental Protection Agency*

For the foregoing reasons, I hereby approve this Order to rescind the 401 WQC issued to Tessera Solar North America, Inc., dated October 14, 2010, and to reissue the 401 WQC to Imperial Valley Solar, LLC. Other than changing the name of the Applicant to Imperial Valley Solar, LLC, and the contact person to you, this reissued 401 WQC is identical in all respects to the rescinded 401 WQC. Therefore, the newly identified Applicant, Imperial Valley Solar, LLC, is subject to all of the same Standard Conditions and Additional Conditions that were originally specified in the October 14, 2010 401 WQC issued to Tessera Solar North America, Inc. To provide the requisite notice of this action, a copy of this Order has been provided to all appropriate agencies, including the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

**PROJECT:** Imperial Valley Solar Project (IVSP)

**APPLICANT:** Imperial Valley Solar, LLC

- ACTION:**
1.  Order for Standard Certification
  2.  Order for Technically-Conditioned Certification
  3.  Order for Denial of Certification

**STANDARD CONDITIONS:**

The following standard conditions apply to all certification actions, except as noted above under Action 3 for denials.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from 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 23 CCR section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.
4. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of Clean Water Act (CWA)



section 401(d), the applicability of any State law authorizing remedies, penalties, process, 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 Water Quality Certification (WQC).

- a. In response to a suspected violation of any condition of this WQC, the Regional Water Quality Control Board (Regional Water Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- b. In response to any violation of the conditions of this WQC, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

#### **ADDITIONAL CONDITIONS:**

The following additional conditions apply to this certification:

This WQC applies towards the proposed project (Project), as described in the CWA section 401 WQC updated application received by the Regional Water Board on December 31, 2009. The issuance of the WQC was delayed because the Applicant continued to work with the Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency, and the Regional Water Board to fully assess the environmental impacts of the Project and provide the required information to the aforementioned agencies.

The Applicant shall provide the Regional Water Board and other interested agencies with written notification of any significant modifications made to the Project prior to implementation of the modifications.

1. This WQC does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
2. This WQC does not authorize the Applicant or any associated party to trespass on any land or property unless the Applicant has obtained written authorization or acquired a special use authorization permit from the land or property owner.
3. A copy of this WQC shall be provided to the appropriate onsite Supervisor for the Project. All personnel performing work on the proposed project shall be familiar with the content of this WQC. Copies of the WQC shall be readily available at the project site at all times during periods of active work and shall be presented to regulatory agency representatives upon request.



4. The Applicant shall grant Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to enter the project site at reasonable times, to ensure compliance with the terms and conditions of this WQC and/or to determine the impacts the Project may have on waters of the United States.
5. The proposed Project shall not be enlarged or extend beyond the proposed Project impact area. The Applicant shall delineate the Project boundaries and staging areas with stakes, flags and/or temporary construction fencing.
6. The area of vegetation and soil disturbance shall be restricted to the smallest extent possible.
7. The Project shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
8. The Project shall not discharge waste classified as "hazardous," as defined in Title 23, California Code of Regulations (CCR), section 2521, California Health and Safety Code section 25140, and Title 22, CCR, section 66260.10 et seq.
9. No oil, petroleum products, or rubbish shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States.
10. No equipment maintenance shall be conducted within or near any stream channel where petroleum products or other pollutants from the equipment may enter waters of the United States.
11. Equipment refueling shall not occur within waters of the United States.
12. Any oil or grease leaks shall be immediately cleaned up.
13. The Applicant shall ensure that all contaminated material and/or contaminated soil removed or excavated from the Project site is properly loaded, transported, and disposed of in accordance with Federal, State, and local regulations.
14. Staging/storage areas for equipment and materials shall be located outside of waters of the United States.
15. The Applicant shall ensure that all disturbed and filled areas are adequately stabilized and protected from erosion and siltation by implementing appropriate soil stabilization, sedimentation and silt control measures.
16. Any flow diversion used during construction shall be designed in a manner to prevent pollution, minimize siltation, and shall provide flows to downstream reaches. Flows shall be maintained to support existing aquatic life and riparian wetlands and habitat that may be located upstream and downstream from any temporary diversion.



17. The Applicant shall restore drainages, to the greatest extent possible, to the original bank configuration, stream bottom width, and channel gradient.
18. All temporary facilities and impacts shall be removed and restored to the preexisting conditions and contours to the extent practicable.
19. Construction related materials and wastes shall be removed from the Project site upon completion of the Project.
20. The Applicant shall submit notice to the Regional Water Board within 60 days of completion of the Project. The notice shall include: 1) a detailed summary of the mitigation and restoration activities implemented during the Project and 2) provide photographic documentation that supports the information summarized in the notice.
21. The Regional Water Board reserves the right to suspend, cancel, or modify and reissue this WQC, after providing notice to the Applicant and/or responsible Site Supervisor, if the Regional Water Board determines that the Project fails to comply with any of the terms or conditions of this WQC.
22. The Applicant shall orally notify the Regional Water Board of any noncompliance that may impact the beneficial uses of waters of the United States, as soon as notification is possible and notification can be provided without substantially impeding measures necessary to address the noncompliance.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or [jmirpour@waterboards.ca.gov](mailto:jmirpour@waterboards.ca.gov).

**WATER QUALITY CERTIFICATION:**

I hereby issue this Order certifying that any discharge from the referenced project will comply with the applicable provisions of 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) of the Clean Water Act, and with other applicable requirements of State law.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicants' Project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan (Basin Plan).





ROBERT PERDUE, Executive Officer  
Colorado River Basin Regional Water Quality Control Board

JJM/

cc: Michelle Lee Mattson, U.S. Army Corps of Engineers, Carlsbad Field Office  
Bill Orme, SWRCB, Division of Water Quality, Water Quality Certification Unit  
Elizabeth Goldmann, USEPA, Region IX  
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Mike Fitzgerald, Ecosphere Environmental Services  
Patrick Mock, URS Corporation

File: 401 Imperial Valley Solar, LLC - Imperial Valley Solar Project, WDID No.  
7A133033001



Mailing List:

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Note: (\*) will e-mail electronic copy



## **PROJECT INFORMATION**

### **Application Date:**

The original application was submitted on November 2, 2009, and an updated application was received on December 31, 2009. The issuance of the WQC was delayed because the Applicant continued to work with the Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency, and the Regional Water Board to fully assess the environmental impacts of the Project and provide the required information to the aforementioned agencies.

### **Applicant:**

Imperial Valley Solar, LLC

### **Contact:**

Mr. Marc C. Van Patten (713) 554-8487

### **Applicant Representative:**

Ms. Angela Leiba, URS Corporation (619) 294-9400

### **Project Name:**

Imperial Valley Solar Project

**Project Description (purpose/goal):** The Imperial Valley Solar Project would be a concentrating solar energy facility generating up to 709-megawatts (MW) and utilizing a maximum of 28,360, 25-kilowatt (kW) SunCatchers (e.g. 28,360 x 25kW = 709,000 kW or 709 MW). For a complete Project Description, please refer to the Permit Number: SPL-2008-01244-MLM, Tessera Solar North America, prepared by the Los Angeles District – U.S. Army Corps of Engineers.

**Project Location:** The Project is located on 6,571 acres, which includes approximately 6,235 acres of federal land managed by the U.S. Bureau of Land Management (BLM), and approximately 366 acres of privately-owned land. The site is approximately 100 miles east of San Diego, 14 miles west of El Centro, and approximately 4 miles east of Ocotillo, California.

**Township/Range:** The following sections or portions of sections in Township 16 of the San Bernardino Meridian identify the Project Site and the planned boundary for development of the Imperial Valley Solar Project. Within Township 16 South, Range 11 East of the San Bernardino Meridian defined by:

- the portion of Section 7 south of the Union Pacific Rail Road (UPRR) ROW (LA 038885),
- the portion of the southwest quarter section and the north half of the southeast quarter section of Section 9 south of the UPRR ROW,



- the southeast quarter-quarter section of the northeast quarter section and the east half of the southeast quarter section of Section 14 north of the I-8 ROW (RO6893) and east of Dunaway Road,
- the southwest, northwest, and southeast quarter-quarter sections of the southwest quarter section of Section 15, and the southwest quarter-quarter of the southeast quarter section of Section 15,
- the northwest quarter and southeast quarter of Section 16,
- all of Section 17,
- Section 18, excluding the southwest and southeast quarter-quarter sections of the northeast quarter section,
- the northwest quarter and the portion of the west half of the southwest quarter of Section 19 north of the I-8 ROW,
- the portion of Sections 20 and 21 north of the I-8 ROW, and
- the portion of the north half of the northwest quarter section and the northwest quarter-quarter section of the northeast quarter section of Section 22 north of the I-8 ROW.

Township 16 South, Range 10 East defined by:

- the portions of Sections 12, 13, and 14 south of the San Diego Metropolitan Transit System (SDMTS) ROW (LA021388),
- the portions of Section 22 south of the SDMTS ROW,
- all of Sections 23 and 24, and
- the portions of Sections 25, 26, and 27 north of the I-8 ROW.

**Receiving Water(s):**

Unnamed ephemeral stream channels potentially connect to the West Side Main Canal, which is a tributary of the Salton Sea.

**Acres and Linear Feet impacted:**

For a complete description of temporary and permanent impacts to waters of the U.S. due to construction of the 709-MW Project, please refer to Table 1 of Permit Number SPL-2008-01244-MLM, Tessera Solar North America, prepared by the Los Angeles District – U.S. Army Corps of Engineers.

**Mitigation:**

For a complete description of mitigation requirements, please refer to Permit Number SPL-2008-01244-MLM, Tessera Solar North America, prepared by the Los Angeles District – U.S. Army Corps of Engineers.



**Federal Permit(s):** U.S. Army Corps of Engineers section 404 Permit Number SPL-2008-01244-MLM.

**Status of CEQA:** The California Energy Commission's (CEC) regulatory program has been approved by the California Secretary for Natural Resources, pursuant to Public Resources Code Section 21080.5, as a "certified regulatory program." Under this certified regulatory program, the CEC is allowed to prepare an environmental analysis of the Project, including an analysis of alternatives and mitigation measures to minimize any significant adverse effects the Project may have on the environment, in lieu of the environmental impact report required by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq.

On February 12, 2010, the CEC published a Staff Assessment and Draft Environmental Impact Statement (EIS) and Draft California Desert Conservation Area Plan Amendment. The Staff Assessment and EIS were jointly prepared by the CEC and the U.S. Department of the Interior, Bureau of Land Management (BLM). An EIS was required because a large portion of the Project is located on federal lands administered by BLM. In response to comments received and other testimony, the CEC prepared Supplemental Staff Assessments, Parts I and II, dated July and August 2010, respectively.

On September 29, 2010, the CEC approved the Presiding Member's Proposed Decision (PMPD), thereby certifying the site on that date. The PMPD included the CEC's Final Staff Assessment, as revised.

File: 401 Imperial Valley Solar, LLC – Imperial Valley Solar Project, WDID No. 7A133033001

