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## San Francisco Bay Regional Water Quality Control Board

September 29, 2020

Governor's Office of Planning & Research

*Sent via electronic mail: No hardcopy to follow*

**Sep 29 2020**

### STATE CLEARINGHOUSE

Alameda County Water District  
ATTN: Greg Watson, Project Engineer (greg.watson@acwd.com)  
43885 South Grimmer Boulevard  
Fremont, CA 94538

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the *Initial Study / Mitigated Negative Declaration, Clean Energy Program Multi-Site Solar Photovoltaic Project – Pits T1 and T2, District Job No. 10093, City of Fremont, Alameda County*  
**SCH No. 2020099001**

Dear Mr. Watson:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Initial Study / Mitigated Negative Declaration, Clean Energy Program Multi-Site Solar Photovoltaic Project – Pits T1 and T2, District Job No. 10093, City of Fremont, Alameda County* (ISMND). The ISMND evaluates the potential environmental impacts associated with implementing the Multi-Site Solar Photovoltaic Project at Pits T1 and T2 (Project).

**Project Summary.** The Alameda County Water District (District) proposes to install floating solar photovoltaic power generation cells atop former Pit T1 and Pit T2 groundwater recharge facilities. The Pit T1 facility would generate about 880 kW AC solar PV power and cover about 130,000 square feet (3.0 acres) of the existing Pit T1 pond. The Pit T2 facility would generate about 2,270 kW AC solar PV power and cover about 240,000 square feet (5.5 acres) of the existing pond. Power generated at each site would be used at the same site, to the extent feasible, with excess power sent to the electrical grid to be used at other District facilities.

**Summary.** As is discussed below, the ISMND does not include proposed mitigation measures for impacts to Pits T1 and T2 associated dredging of the pits to provide foundations for photovoltaic cells or for the installation of anchors for the floating photovoltaic cells. In addition, the ISMND does not acknowledge that the addition of 8.5 acres of floating fill to Pits T1 and T2 is a significant impact to these waters of the State, and the ISMND does not propose mitigation for this significant impact.

**Comment 1. The Project will impact beneficial uses of waters of the State and will be required to provide mitigation for those impacts.**

The Project site consists of two former quarry ponds adjacent to Alameda Creek. The *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan) defines the beneficial uses of waters of the State. The following beneficial uses are listed in the Basin Plan for the quarry ponds adjacent to Alameda Creek: groundwater recharge, commercial and sport fishing, cold freshwater habitat, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation. Placing 8.5 acres of floating fill in Pits T1 and T2 will compromise the beneficial uses designated for quarry ponds adjacent to Alameda Creek.

Please revise the ISMND to assess the impact on beneficial uses associated with placing 8.5 acres of floating fill in Pits T1 and T2 and to provide sufficient mitigation for those impacts.

The ISMND acknowledges that any dredging necessary to facilitate installation of the floating photovoltaic cells and the anchors necessary to hold the photovoltaic cells in place would be subject to the jurisdiction of the Water Board and would require mitigation. However, the ISMND does not proposed specific mitigation projects for those impacts.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act.

**Conclusion**

The current text of the ISMND does not assess the full extent of the Project's impacts to waters of the State associated with placing 8.5 acres of floating fill over waters of the State. In addition, the ISMND does not include proposed mitigation projects for the Project's impacts associated with dredging waters of the State, placing permanent anchors in waters of the State, or shading of waters of the State. Impacts to the jurisdictional waters at the project site, as well as proposed, appropriate mitigation measures or such impacts, will require review under CEQA before the Water Board can issue permits for those proposed impacts. The District is encouraged to revise the ISMND to include a full assessment of Project impacts to waters of the State and a thorough discussion of appropriate mitigation measures for impacts to those waters, and to circulate those mitigation proposals for public review by the resource agencies and other stakeholders.

If the ISMND is adopted without providing acceptable mitigation proposals for all Project impacts to waters of the State, it may not be adequate to support the issuance of CWA Section 401 certification and Waste Discharge Requirements for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Brian Wines".

Brian Wines  
Water Resources Control Engineer  
South and East Bay Watershed Section

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
CDFW, Marcia Grefsrud ([marcia.grefsrud@wildlife.ca.gov](mailto:marcia.grefsrud@wildlife.ca.gov))