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<b>Project Title:</b>	Potentia-Virdi Battery Energy Storage System
<b>TN #:</b>	258675
<b>Document Title:</b>	Comments on AB 205 Opt-in Application for Certification
<b>Description:</b>	Letter from California Water Boards- Comments on AB 205 OPT-IN Application for Certification, CEC Docket Number 24-OPT-04, Levy Alameda, LLC, Potentia-Virdi Battery Energy Storage System Project, Alameda Couty
<b>Filer:</b>	Marichka Haws
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## Central Valley Regional Water Quality Control Board

22 August 2024

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### **COMMENTS ON AB 205 OPT-IN APPLICATION FOR CERTIFICATION, CEC DOCKET NUMBER 24-OPT-04, LEVY ALAMEDA, LLC, POTENTIA-VIRIDI BATTERY ENERGY STORAGE SYSTEM PROJECT, ALAMEDA COUNTY**

As per the provisions of the Public Resources Code section 25545.5 Coordination Plan developed between the California Energy Commission and the California State Water Resources Control Board and California Regional Water Quality Control Boards, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed Levy Alameda, LLC's application (Application) for certification of the Potentia-Viridi Battery Energy Storage System Project proposed in Alameda County.

Levy Alameda, LLC proposes to construct, operate, and eventually repower or decommission the 400 megawatt (MW) Potentia-Viridi Battery Energy Storage System (Project). The primary components of the Project include an up to 3,200 megawatt-hour (MWh) battery energy storage system (BESS) facility, an operations and maintenance building, a project substation, a 500 kilovolt (kV) overhead intertie transmission (gen-tie) line, and interconnection facilities within the Pacific Gas and Electric (PG&E) owned and operated Tesla Substation. The Project will draw electricity from the power grid to charge and store electrical energy and discharge back to the power grid when the stored energy is needed. The Project will be remotely operated and monitored year-round and be available to receive or deliver energy 24 hours a day and 365 days a year. During the operational life of the Project, qualified technicians will routinely inspect the Project facilities and conduct necessary maintenance to ensure reliable and safe operational readiness.

The Project is located within 70 acres of Assessor Parcel Number (APN) 99B-7890-002-04 located at 17257 Patterson Pass Road in Tracy, southwest of Interstate 580 and Interstate 205. The nearest municipality to the Project site is the City of Tracy approximately 2.5 miles to the northeast. The gen-tie line will extend southeast from the Project substation, crossing Patterson Pass Road, and then proceed east to the Point of Interconnection (POI) at the Tesla Substation. Undeveloped rural agricultural lands.

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high-voltage transmission lines and electrical substations, rural roads, and railroad lines are land uses represented in the immediate vicinity of the Project.

Based on the Application and the project description, the following permits may be required from the Central Valley Water Board:

- Clean Water Act (CWA) Section 401, Water Quality Certification;
- Waste Discharge Requirements for the Discharge of Dredged or Fill Material to Waters of the State;
- Coverage under National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order WQ 2022-0057-DWQ);

As per Public Resources Code section 25545.5, subdivision (d)(2), the Central Valley Water Board is required to take final action on the opt-in facility within 90 days after the certification of the final environmental impact report (EIR) by the California Energy Commission, provided that Levy Alameda, LLC has filed a complete application with the Central Valley Water Board prior to certification of the Final EIR. Additionally, the applicable permit(s) must be obtained prior to commencement of construction activities.

#### Clean Water Act (CWA) Section 401, Water Quality Certification

The Central Valley Water Board has regulatory authority over wetlands and waterways under the Federal Clean Water Act (CWA) and the California Water Code, Division 7 (CWC). Discharge of dredged or fill material to waters of the United States requires a CWA Section 401 Water Quality Certification from the Central Valley Water Board. Section 401 Certifications are issued in combination with CWA Section 404 Permits issued by the Army Corps of Engineers. Project activities that may require a section 401 Water Quality Certification include any modifications to these waters, such as the replacement or installation of culverts and/or low water stream crossings, stream bank modifications, filling of wetlands, etc. Steps must be taken to first avoid and minimize impacts to these waters, and then mitigate for unavoidable impacts.

An Army Corps of Engineers Nationwide Permit Pre-Construction Notification (PCN) and California Department of Fish and Wildlife Lake and Streambed Alteration Agreement (LSAA) were included in the Application which indicated impacts to waters of the U.S. and waters of the state. According to the Application, the project includes two features that will require placement of fill materials within regulated waters of the U.S., including improvements to an existing culvert under Patterson Road, and the construction of a new low-water crossing within the corridor of the proposed overhead gen-tie line. Patterson Run, an ephemeral stream system, runs parallel to Patterson Road adjacent to the Project site. An application for a Section 401 Water Quality Certification will be required for impacts to waters of the U.S.

Both the Section 404 Permit and Section 401 Water Quality Certification must be obtained prior to site disturbance. Any person discharging dredge or fill materials to waters of the State must file a report of waste discharge pursuant to Sections 13376 and 13260 of the California Water Code. Both the requirements to submit a report of waste discharge and apply for a Water Quality Certification may be met using the same

application form, found at [Water Boards 401 Water Quality Certification and/or WDRs Application](https://www.waterboards.ca.gov/water_issues/programs/cwa401/#resources)

([https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/#resources](https://www.waterboards.ca.gov/water_issues/programs/cwa401/#resources)).

This link includes the application materials and guidance documents regarding what information is needed for a complete application.

**Potentia-Viridi Battery Energy Storage System Project Application Data Deficiencies:**

- Section 401 Water Quality Certification application (draft application is sufficient at this time);
- An aquatic resource delineation report verified by U.S. Army Corps of Engineers, if verification is required by the Corps;
- A description of the waters proposed to be impacted by the project including the quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location rounded to at least the nearest one-hundredth (0.01) of an acre and nearest linear foot, and cubic yards of fill.
- A compensatory mitigation plan for permanent physical loss and permanent ecological degradation of a water of the state. The plan shall comport with State Water Resources Control Board's Supplemental Dredge or Fill Guidelines, Subpart J. A link is provided: [State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State \(ca.gov\)](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2021/procedures.pdf) ([https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/2021/procedures.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2021/procedures.pdf))

**NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (CGP)**

Construction activity resulting in a land disturbance of one acre or more must obtain coverage under the CGP, including, but not limited to, clearing, grading, grubbing, or excavation. Project activities that may require coverage under the CGP include the construction of new access roads, widening of existing access roads, and clearing and/or grading activities for staging/laydown areas, equipment storage/maintenance areas, and work areas around each turbine. The project must be conditioned to implement stormwater pollution controls during construction and post-construction as required by the CGP. To apply for coverage under the CGP, the Legally Responsible Person (LRP) for the project must submit Permit Registration Documents electronically prior to construction. Detailed information on the CGP can be found on the State Water Board website [Construction Stormwater General Permit Order WQ 2022-0057-DWQ \(ca.gov\)](https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction/general_permit_reissuance.html)

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This link includes the application materials and guidance documents regarding what information is needed for a complete application.

The “Water Resources” section correctly identifies the Project’s requirement to apply for a Notice of Intent under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order WQ 2022-0057-DWQ, NPDES No. CAS000002 (Construction General Permit). A preliminary Erosion and Sediment Control Plan was submitted in Appendix 1N as a guidance document, but it does not conform to the requirements of the Construction General Permit.

**Potentia-Viridi Battery Energy Storage System Project Application Data  
Deficiencies:**

- Notice of Intent to request coverage under the CGP, including a Risk Level Determination, submitted through the State Water Board Stormwater Multiple Application and Report Tracking System (SMARTS);
- Site Drawings and maps of areas requiring CGP coverage;
- Construction Stormwater Pollution Prevention Plan (SWPPP) developed by a Qualified SWPPP Developer (QSD) or modifications to the *Erosion and Sediment Control Plan, Potentia-Viridi Battery Energy Storage Project, Alameda County, California, July 2024*, to conform to the requirements of the Construction General Permit.

If you have any questions or comments regarding this matter, please contact Jenna Yang at (916) 464-4764 or by email at [Jenna.Yang@waterboards.ca.gov](mailto:Jenna.Yang@waterboards.ca.gov).

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Executive Officer

cc (via email):

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