



September 10, 2013

Katie Carpenter, Engineering Geologist  
Region 5 (Central Valley)  
Regional Water Quality Control Board  
1685 "E" Street  
Fresno, California 93706-2020

Subject: Early Consultation  
Paramount Farms Inc.  
El Dorado Plant Expansion

Dear Ms. Carpenter:

The California Department of Fish and Wildlife (Department) has reviewed the Early Consultation submitted by the Regional Water Quality Control Board. The proposed expansion would allow the existing Pistachio Plant to increase its average wastewater flows for the season from 0.35 million gallons per day to as much as 1 million gallons per day with a daily maximum flow of 2.5 million gallons per day and a total annual flow of 42 million gallons. The increased flows would improve hulling operations and improve quality control within the Plant. No increase in production capacity is proposed. To handle the increased flows, the associated wastewater discharge application areas would also be expanded to include approximately 600 acres (net) of pistachio trees for reuse of wastewater. The Project will involve trenching for installation of a new irrigation line to send the wastewater to the new reuse areas where it can be tied into the existing irrigation system. The proposed trench line runs parallel to the Coalinga Canal and is located approximately one mile northeast from the intersection of South El Dorado Avenue and West Jayne Avenue, near Coalinga.

Based on aerial imagery, the proposed trench site appears to be located on undisturbed land that likely supports State – and federally listed species. Also, the Department owned Pleasant Valley Ecological Reserve is located one mile west from the Project site. Special-status species that have been documented on the Ecological Reserve and that may be present on the Project site include the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*), the State endangered and fully protected and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); and the State species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), and brittlescale (*Atriplex depressa*).

The Project site has appropriate habitat for nesting, burrowing, and foraging opportunities for the above species. In addition, the Project site has been identified by the California Natural Diversity Database as supporting Great Valley mesquite scrub, which is a rare natural community. Because the Department has concerns that ground disturbing activities could result in impacts to the special status species discussed above, it is recommended that focused biological surveys be conducted well in advance of commencing soil or vegetation disturbing activities by qualified wildlife biologists in all areas of potentially suitable habitat during the appropriate survey period(s). Survey results can then be used to identify any mitigation, minimization, and avoidance measures necessary to reduce potential impacts to special-status biological resources to less than significant. Based on the potentially significant impacts the Project could have on biological resources, the Department does not believe a Categorical Exemption is appropriate. Therefore, the Department proposes the avoidance, minimization, and mitigation measures necessary to ensure the impacts are less than significant be included as enforceable measures in a California Environmental Quality Act (CEQA) document advised to be prepared for this Project so as to inform any potential permitting needs. Our comments follow.

#### **Department Jurisdiction**

**Trustee Agency Authority:** The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 [commencing with Section 21000] of the Public Resources Code).

**Responsible Agency Authority:** The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), the Department may need to issue an Incidental Take Permit (ITP) for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (sections 21001(c), 21083, Guidelines sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. The Project has the potential to reduce the number

or restrict the range of endangered, rare, or threatened species (as defined in Section 15380 of CEQA).

**Bird Protection:** The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Fish and Game Code sections that protect birds, their eggs, and nests include sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird). In the event vegetation removal is planned, it is advised that appropriate avoidance and minimization measures for raptors and other nesting birds potentially present in the Project site vicinity be addressed in the CEQA document.

**Fully Protected Species:** The Department has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take." In addition to having special status under State law, the fully protected blunt-nosed leopard lizard (*Gambelia sila*) has the potential to occur in the saltbush and non-native grassland habitat throughout the Project area. The Department advises a CEQA document be prepared for this Project that evaluates and addresses the potential Project-related impacts to this species and includes appropriate species-specific avoidance and minimization measures.

### **Potential Project Impacts and Recommendations**

**Blunt-nosed Leopard Lizard (BNLL):** Known occurrence records document BNLL within 1 mile of the Project site. Because BNLL is fully protected and, therefore, no "take" incidental or otherwise can be authorized by Department, protocol-level surveys are advised to be conducted prior to any ground-disturbing activities in all areas of suitable habitat following the Department's protocol-level survey methods described in the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (DFG, 2004) no more than one year prior to initiation of the project. Suitable BNLL habitat includes all areas of grassland and shrub scrub habitat that contains required habitat elements, such as small mammal burrows. BNLL are also known to utilize open space patches between suitable habitats including disturbed sites and unpaved access roadways. In the event that this species is detected during protocol-level surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid "take." It is important to note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific date, temperature, and time parameters which must be adhered to; as a result,

protocol-level surveys for this species are not synonymous with 30-day "pre-construction" surveys often recommended for other wildlife species.

The Department advises that all potential burrows, which could be occupied by BNLL, and all individuals observed to be above ground be avoided. The Department recommends that in all areas where ground-disturbing Project activities will occur, suitable burrows within and adjacent to potential habitat for BNLL be avoided by a minimum 50 feet; that an appropriate number of qualified biologists be present during all ground-disturbing Project activities to ensure that BNLL above ground are not impacted; and that any individual that may enter an area of Project activity be allowed to leave unobstructed on its own. Dirt roads can be important habitat features for BNLL, and because the Project would result in an increase in traffic during construction which increases the potential for vehicle strikes, it is advised the CEQA document clearly state how impacts to individual BNLL using those areas will be avoided including the use of a biological monitor to guide heavy equipment onto the site, exclusion fencing, and reduced speed limits to assist drivers in visually noting when an animal may be moving into or off of the roadway.

**San Joaquin Kit Fox (SJKF):** Based on the known occurrence records and the habitat type present on the Project site, it is likely SJKF forage and possibly den within the Project site. SJKF populations are known to fluctuate over years and presence/absence in any one year does not necessarily depict the potential for kit fox to occur on a site. It is important to note that SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance. The Department recommends having a qualified biologist conduct focused surveys for potential, known, atypical, and active dens along the entire Project footprint and follow the survey methods found in the USFWS's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). A pre-construction survey is also recommended and a biological monitor is advised to be present during any ground-disturbing activities occurring within the Project site. In the event that this species is detected during surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State ITP pursuant to Fish and Game Code Section 2081(b) prior to any ground-disturbing activities. Avoidance, minimization, and mitigation measures, including exclusion buffers, for SJKF are suggested to be fully addressed in the CEQA document prepared for the Project; guidance can be found in the document referenced above.

**San Joaquin Antelope Squirrel (SJAS):** Known occurrence records document SJAS within and adjacent to the Project site. In order to determine if SJAS occupy the Project site, focused protocol-level surveys would need to be conducted by a qualified wildlife

biologist. These surveys must be conducted well in advance of ground-disturbing activities in order to determine if impacts to SJAS could occur. In order to implement full avoidance for SJAS, the Department recommends a minimum 50-foot no-disturbance buffer be employed around all burrows that could be used by SJAS. If "take" could occur as a result of Project implementation, acquisition of a State ITP would be warranted prior to initiating ground-disturbing activities. Alternatively, the applicant has the option of assuming presence of these species and securing a State ITP. Avoidance, minimization, and mitigation measures for SJAS should be fully addressed in the CEQA document prepared for the Project.

**Nesting Birds:** The trees, shrubs, and grasses within and in the vicinity of the Project site likely provide nesting habitat for songbirds and raptors. The Department encourages Project implementation to occur during the non-nesting bird season. However, if ground disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. Prior to work commencing; including staging, clearing, and grubbing, the Department recommends surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of the of the Project and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors, and movement of workers or equipment. Identified nests should be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, the work causing that change should cease and the Department consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, the Department also recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended the Department be notified in advance of implementation of a no-disturbance buffer variance.

**Swainson's Hawk:** This State threatened species has the potential to nest in trees adjacent to and within the Project site. To evaluate potential Project-related impacts, the Department recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to any ground disturbance. If ground-disturbing Project activities are to take place during the normal bird breeding season (February 1 through September 15), pre-construction surveys for active nests is recommended to be conducted by a qualified biologist no more than 10 days prior to the start of construction. A minimum no-disturbance buffer of 0.5 miles is recommended around active SWHA nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

**Burrowing Owl:** There are multiple known occurrence records of burrowing owl within close proximity to the Project area. To avoid impacts to the species, the Department recommends that focused surveys be conducted following the survey methodology developed by the California Burrowing Owl Consortium (CBOC, 1993) well in advance of any ground disturbance associated with Project construction as well as a 10-day prior to disturbance pre-construction survey effort. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), and potential burrowing owl burrows are present within the Project footprint, implementation of avoidance measures are warranted. In the event that burrowing owls are found, the Department's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) (Staff Report) recommends that impacts to occupied burrows be avoided by implementation of no-disturbance buffer zones, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement the recommended buffer zones could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure, in violation of Fish and Game Code and the Migratory Bird Treaty Act.

If the Project proponent proposes to evict burrowing owls that may be present, the Department recommends passive relocation during the non-breeding season. We recommend that the CEQA document describe all avoidance measures that would be employed in the event that owls are found on the Project site, as well as methods that would be used to evict owls from burrows. We also recommend that the CEQA document specify how the impact of evicting owls would be mitigated to a less than significant level. The Staff Report recommends that foraging habitat be acquired and permanently protected to offset the loss of foraging and burrow habitat. The Department also suggests replacement of occupied burrows with artificial burrows at a

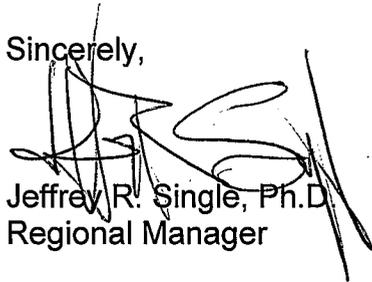
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ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting a burrowing owl.

**Federally Listed Species:** The Department also recommends consulting with the USFWS on potential impacts to the federally listed SJKF and BNLL. "Take" under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; "take" under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of Project implementation.

More information on survey and monitoring protocols for sensitive species can be found at the Department's website ([www.dfg.ca.gov/wildlife/nongame/survey\\_monitor.html](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)). If you have any questions on these issues, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

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### **Literature Cited**

CBOC, 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. California Burrowing Owl Consortium, April 1993.

CDFG, 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California. California Department of Fish and Game.

CDFG, 2004. Approved Survey Methodology for the Blunt-nosed Leopard Lizard. Department of Fish and Game, May 2004.

CDFG, 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

SWHA TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California Central Valley. Swainson's Hawk Technical Advisory Committee.

USFWS, 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service.