



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 06, 2024

Governor’s Office of Planning & Research

Gary Mills  
Tulare County Resource Management Agency  
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**May 06 2024**  
**STATE CLEARINGHOUSE**

**Subject: Setton Pistachio Treated Wastewater Land Application Expansion Project (Project)  
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
SCH No. 2023030410**

Dear Gary Mills:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Tulare County, as Lead Agency, for the Setton Pistachio Treated Wastewater Land Application Expansion Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Setton Pistachio

**Objective:** The Project proposes to increase the volume of treated wastewater that would be applied to the land application areas (LAAs) during the pistachio harvest season. To account for the increased volume of treated wastewater to be used for irrigation, Setton is proposing to add 89 acres of LAAs to expand their wastewater treatment disposal capacity. The Project includes installation of a 15-inch subsurface pipeline to connect the additional LAAs to the existing treated wastewater distribution pipelines and installation of irrigation lines within the LAAs. Two encroachment permits would be required from Tulare County for the new pipeline to reach two of the new LAAs. The additional LAAs would allow Setton Pistachio to increase the annual wastewater discharge from 60 million gallons per year (MGY) to 85 MGY (maximum daily discharge rates would remain at 3 million gallons), allowing the facility to fully utilize its current design capacity. Improvements to the existing wastewater treatment facilities are also proposed. This would include adding fiber filters to the existing gunite-lined pond to remove excess solids from treated wastewater prior to its release into the East and West Ponds, where it is stored on a short-term basis for distribution to the LAAs. Further, paddles would be installed in the West Pond for aeration, and a Venturi Model 06 EMOHTM system would be installed in the East Pond to improve aeration to prevent septicity and odor production.

**Location:** The Setton Terra Bella Pistachio Facility is located on an 80-acre site at 9370 Road 234, Terra Bella, east of State Route (SR) 65, in unincorporated Tulare County. An additional 89 acres of LAAs are proposed on Assessor Parcel Numbers (APNs) 320-040-004, -005, -006, -007, -008, -009; 320-040-034; and 320-070-023, -024, and -025 (89 acres of pistachio orchards with crop cover). As with the existing LAAs, the proposed LAAs are owned by Setton Pistachio, zoned AE-20 (Exclusive Agricultural

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Zone - 20 Acre Minimum) by Tulare County and are surrounded by agricultural lands and local roads.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Tulare County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands, including orchards and recently tilled row crops, water treatment ponds, and disturbed and developed areas. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*).

### **San Joaquin Kit Fox**

Mitigation Measure 3.5-1c states, "If potential kit fox dens are identified within the 200-foot buffer of the project area, a USFWS-approved biologist will determine if the dens are occupied by kit fox. If occupied dens are found, a no-disturbance buffer a minimum of 100 feet around occupied dens will be maintained for the duration of treatment activities. If a natal den is discovered within 200 feet of a treatment site, all activity shall cease, and the applicant will contact the USFWS and CDFW to consult about potential avoidance measures before activities can occur."

CDFW concurs with this measure but recommends that the buffer area described within the mitigation measure be extended to a minimum of 500 feet for San Joaquin kit fox natal dens, and that all activities cease while the applicant consults with CDFW to discuss how to avoid take.

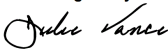
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## Editorial Comments and/or Suggestions

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the San Joaquin kit fox. 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 any Project activities.

CDFW appreciates the opportunity to comment to assist Tulare County in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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