

**Regional Water Quality Control Board  
Central Valley Region  
Board Meeting – 5/6 December 2013**

**Response to Written Comments for Paramount Farms International, LLC, El Dorado Pistachio Processing Plant and Paramount Farming Company, LLC, Tentative Waste Discharge Requirements and Initial Study/Mitigated Negative Declaration**

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At a public hearing scheduled for 5/6 December 2013, the Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) will consider adoption of Waste Discharge Requirements (WDRs) and an Initial Study/Mitigated Negative Declaration for Paramount Farms International, LLC, El Dorado Pistachio Processing Plant and Paramount Farming Company, LLC. This document contains responses to written comments received from interested parties regarding the Tentative WDRs and Initial Study/ Mitigated Negative Declaration (IS/MND) circulated on 24 September 2013. Written comments from interested parties were required by public notice to be received by the Central Valley Water Board by 24 October 2013 to receive full consideration. Comments were received from Insight Environmental Consultants on behalf of Paramount Farms International, LLC and Paramount Farming Company, LLC (Paramount), and Ms. Kathy Kinsland.

Written comments from the above interested parties are summarized in the appropriate sections below, followed by responses from Central Valley Water Board staff. Based on the comments, Central Valley Water Board staff have made some minor changes to the tentative WDRs and IS/MND. Staff also made a few minor changes to correct typographical errors and to improve clarity. Specific additions are shown in Bold and specific deletions are shown in strikeout. Additional changes made by staff are discussed at the end of this document.

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**PARAMOUNT COMMENTS**

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**PARAMOUNT – COMMENT No. 1:** The Land Application Area Specifications prohibit irrigation with wastewater within 24-hours of a storm event of measurable precipitation, as a result during peak harvest the additional volume of blocks may be required for temporary storage during storm events outside of the 100-year storm. In addition, Paramount Farming Company, LLC may identify additional times when irrigation of the pistachio orchards may not be suitable (i.e., when additional harvest passes are required, or when the application of certain pesticides requires a brief cessation of irrigation.

Paramount requests that Finding 7 on page 2 be modified as follows:

“...On an emergency basis, in case of a ~~400-year~~ storm **event**, ~~or~~ failure of the irrigation system, **or when irrigation is temporarily halted for system maintenance, harvest, or crop demands** during the processing season, Paramount may temporarily discharge wastewater to a secondary holding area adjacent to the settling pond and consisting of nine shallow blocks with a combined capacity of about 8.5 million gallons...”

**RESPONSE:** Finding 7 on page 2 of the tentative WDRs has been modified as follows:

“...On an emergency basis, in case of a ~~400-year~~ **significant** storm **event**, ~~or~~ failure of the irrigation system, **or when irrigation is temporarily halted for system maintenance, harvest, or crop demands** during the processing season, Paramount may temporarily discharge wastewater to a secondary holding area adjacent to the settling pond ~~and~~ consisting of nine shallow blocks with a combined capacity of about 8.5 million gallons...”

**PARAMOUNT – COMMENT No. 2:** As discussed in our 11 June 2013 submittal, due to the arid climate and characteristics of the dried hull material, Paramount is uncertain whether dry farming the

Solids Reuse Area will be successful. Therefore, Paramount requests a provision authorizing a mechanical separation system and off-site disposal of the hulls, subject to approval by the Central Valley Water Board. If solids application is discontinued, Paramount requests that the Board allow the 80-acre Solids Reuse Area to be used for wastewater application on an emergency basis.

Paramount requests that Solids Specifications E.4 and Land Application Area Specifications D.1 be modified as follows:

Solids Specifications E.4. Any proposed change in solids use, **separation**, or disposal practices shall be reported in writing to the Executive Officer at least 90 days in advance of the change.

Land Application Area Specifications D.1. For the purpose of this Order, "land application areas" refers to the discharge area described in Finding 14, **and if approved by the Executive Officer pursuant to Solids Specification E.4, the former land application area described in Finding 8, for emergency use only.**

**RESPONSE:** Solids Specifications E.4, and Land Application Area Specifications D.1 in the tentative WDRs have been modified as follows:

Solids Specifications E.4. Any proposed change in solids use, **separation**, or disposal practices shall be reported in writing to the Executive Officer **for approval** at least 90 days in advance of the change.

Land Application Area Specifications D.1. For the purpose of this Order, "land application areas" refers to the discharge area described in Finding 14, **and if off-site disposal of solids is approved by the Executive Officer pursuant to Solids Specification E.4, for emergency use only, the former 80-acre land application area as described in Finding 8.**

**PARAMOUNT – COMMENT No. 3:** After reviewing the project delays, expense, and burden to conduct protocol level surveys for potentially limited impacts on special status or protested species, Paramount reviewed the proposed pipeline route and determined that an alternate route for the new irrigation line may be environmentally superior. Paramount is looking into this proposed route and requests that the mitigation measure for Biological Resources be modified as follows:

## 2. Biological Resources

- a. ~~Conduct protocol level surveys in advanced of trenching activities to install the new irrigation line and Contact DFW and the United States Federal Wildlife Service~~ **in advance of trenching activities to install the new irrigation line to determine whether pre-construction or protocol level surveys will be required and** to ensure appropriate measures will be taken to avoid or mitigate potential impacts to special status or endangered species.

**RESPONSE:** The tentative WDRs and IS/MND have been modified to reflect this change.

**PARAMOUNT – COMMENT No. 4:** The final resolution on the new irrigation line will likely extend beyond the 2014 hulling season. It is our understanding that the Board is considering authorizing wastewater discharge to the existing 80-acre land application area at the currently authorized discharge rates until the irrigation pipeline is constructed. Paramount supports such an amendment.

**RESPONSE:** To address issues associated with the possible delay in installing the new irrigation pipeline to transfer wastewater from the Plant to the new land application areas, the tentative WDRs have been modified as follows:

**Finding 15. Due to factors beyond Paramount’s control, installation of a new pipeline to transfer wastewater from the Plant to the new land application areas may not occur prior to the next processing season. This Order holds wastewater flows to the existing 80-acre land application area to the current limits of 0.35 mgd (seasonal average) and 0.45 mgd (daily maximum) until completion of the new irrigation line, and includes a time schedule to complete the installation prior to the start of the 2015 season.”**

**Flow Limitation B1. Discharge to the settling pond shall not exceed a maximum daily flow of 0.45 million gallons per day (mgd) or a seasonal average flow of 0.35 mgd until the Discharger has satisfied Provision G.17, after which the discharge to the settling pond shall not exceed a maximum daily flow of 2.5 million gallons per day (mgd), an average daily flow for the season of 1 mgd, or an annual flow for the season of 42 million gallons. [Monitored at INF-001]”**

**Provision G.17. By 3 August 2015, the Discharger shall provide written certification that it has completed installation of the new irrigation line to transfer wastewater from the settling pond to the new land application areas as described in Finding 14. Upon Executive Officer review and written concurrence with the certification, the requirements of this provision shall be considered satisfied.**

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## **KATHY KINSLAND COMMENTS**

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**KATHY KINSLAND – COMMENT No. 1:** Ms. Kinsland comments that the Board is exceeding its authority to impose CEQA requirements and should not be assuming the role of lead agency, because “an agency with general governmental powers” should be the lead agency. In addition, both Water Code section 13389 and the Title 23 regulations exempt this permitting action from CEQA review.

**RESPONSE:** No changes have been made in response to these comments. CEQA applies to discretionary projects approved by public agencies. For the purposes of CEQA, a “project” means any activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. This definition certainly encompasses the issuance of waste discharge requirements (WDRs) by the Central Valley Water Board. Therefore, unless the project is exempt from CEQA, the Board must ensure that CEQA’s procedural steps have been followed before issuing WDRs.

However, the “agency with general governmental powers” regulation cited by the Commenter is only applicable when two or more public agencies will be involved with a project. (Cal. Code Regs. tit. 14, § 15051.) While many of the Board’s permits involve multiple agencies, including agencies with general governmental powers (such as a County government), this action does not. In this case, the County’s land use entitlement process has not been triggered, because there is no change in the land use type. Since the County did not need to take any discretionary action on the project, and since no other agency needs to take action on this project before the Board issues the WDRs, it is the Board’s responsibility to assume the lead agency role for the purposes of complying with CEQA.

Even if the lead agency responsibility falls upon the Board, no additional environmental review is needed if the project is subject to a CEQA exemption. Though the Commenter suggests two exemptions, neither are applicable to this action. First, although Water Code section 13389 exempts the issuance of certain National Pollutant Discharge Elimination System (NPDES) permits from CEQA review, the set of WDRs sought by the Discharger is not an NPDES permit, and so this CEQA exemption does not apply. Second, the Title 23 regulations cited by the Ms. Kinsland are also inapplicable to the issuance of WDRs; these regulations exempt the Board’s Basin Planning Program from certain CEQA requirements, because those programs have been certified as exempt regulatory programs by the Secretary for Natural Resources in accordance with subdivision (c) of Public Resources Code section 21080.5. The Board’s Basin Planning Program is the program under which the Board develops and promulgates Water Quality Control Plans, and the issuance of WDRs does not fall within that program.

**KATHY KINSLAND – COMMENT No. 2:** Ms. Kinsland comments that the mitigation measures in the IS/MND are not supported by law. These include the requirement that the Discharger conduct wildlife surveys and consult with federal and state wildlife agencies prior to installing new wastewater disposal lines, so that no special-status species will be impacted. She states that this mitigation measure is both unnecessary and unenforceable.

**RESPONSE:** Staff has clarified the IS/MND to make it clear that that concerns with the potential for the project to impact threatened or endangered species and the mitigation measures to be implemented are associated with installation and trenching for the irrigation line through an area of open undisturbed land. There are several special-status species within the general area where the Discharger plans to build the new wastewater disposal lines. Surveying these areas for special-status species prior to construction will prevent any impacts to these species. The Board may use a Mitigated Negative Declaration, because the project plans, when provisions regarding the surveys are added, will avoid any potential significant effect on the environment. These mitigation measures may be incorporated as enforceable provisions in the Board’s WDRs.

**KATHY KINSLAND – COMMENT No. 3:** Ms. Kinsland comments that the Discharger is entitled to a refund of the application fee inappropriately used by staff for the unauthorized CEQA review.

**RESPONSE:** The Board does not charge for CEQA review.

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## **CENTRAL VALLEY WATER BOARD CHANGES**

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Staff has also added the following Provisions to incorporate the mitigation measures for Air Quality, Biological Resources, and Cultural Resources from the IS/MND into the tentative WDRs.

- G.14. Prior to initiating any ground disturbing activities, associated with installation of the new irrigation line to send wastewater to the new land application areas, the Discharger shall contact the San Joaquin Air Pollution Control District to obtain any necessary permits and ensure compliance with requirements of Regulation VIII for Fugitive Dust Control.**
  
- G.15. Prior to initiating any ground disturbing activities, associated with installation of the new irrigation line to send wastewater to the new land application areas, the Discharger shall contact the California Department of Fish and Wildlife (DFW) and the United States Federal Wildlife Service to determine whether pre-construction or protocol level surveys will be required, and ensure appropriate measures will be taken to avoid or mitigate potential impacts to special status or endangered species.**
  
- G.16. Prior to initiating any ground disturbing activities, associated with installation of the new irrigation line to send wastewater to the new land application areas, the Discharger shall contact the Native American Heritage Commission (NAHC) to establish if there are any Native American cultural resources in the area. In the event any cultural resources are unearthed during trenching activities, all work shall be halted in the area of the find, and an Archeologist and the NAHC shall be contacted to evaluate the find and implement any necessary mitigation measures.**