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August 7, 2012

Steve Popenoe, WRCE
California Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, California 93706

**Subject: Initial Study/Mitigated Negative Declaration
Adoption of Tentative Waste Discharge Requirements
Spicer City Juice Plant Expansion (Project)
23145 Lerdo Highway
Buttonwillow, Kern County
SCH No. 2012071027**

Dear Mr. Popenoe:

The California Department of Fish and Game (Department) has reviewed the Initial Study (IS) and draft Mitigated Negative Declaration (MND) prepared by the Central Valley Regional Water Quality Control Board (Water Board) for the Project referenced above. Based on the IS findings, the Water Board will consider adoption of an MND and Waste Discharge Requirements for the Project in a public hearing in October 2012. As the Department understands the Project, approval will allow the expansion of an existing seasonal pomegranate fruit processing and juice manufacturing plant near the community of Buttonwillow in Kern County. The expanded Plant will be able to process juice from other fruits and will operate most of the year, increasing wastewater flows from under 0.1 million gallons per year to as much as 6.7 million gallons per year. After the expansion is complete, additional wastewater generated from the fruit and juice processing facilities would be stored in constructed unlined ponds prior to land application to 2,200 acres of cropland near the plant site. The 2,200 acres of cropland where the increased process wastewater would be applied are at present in irrigated agricultural use. No information was provided in the Project Description section of the IS discussing whether additional processing facilities would need to be constructed to accommodate the plant production expansion. Currently the plant occupies a portion of a 45-acre parcel near the intersection of Main Drain Road and Lerdo Highway, and processed wastewater from the plant is applied to 280 acres of cropland near the plant site.

The California Environmental Quality Act (CEQA) requires that the Lead Agency, through its preparation of an IS, consider the whole of the Project. The Department has identified areas where biological resources could potentially be impacted by ground-disturbing activities associated with the construction of any new facilities to accommodate the plant expansion. Portions of the 45-acre parcel where the processing plant exists appear to be in non-use and may provide habitat for several special status species. Specifically, the Department is concerned that plant expansion would result in ground-disturbing activities, with the potential to impact the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*), and the following State Species of Special Concern: western snowy plover (*Charadrius alexandrinus nivosus*), burrowing owl (*Athene cunicularia*), and short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*). Additionally, the California Rare Plant Rank 1B San Joaquin woollythreads (*Monolopia congdonii*), Kern mallow (*Eremalche kernensis*), and recurved larkspur (*Delphinium recurvatum*) are known to have occurred in the vicinity of the site.

If expansion of the plant will include ground-disturbing activities, they should be detailed in a revised Project Description. Additionally, the Department recommends that focused biological surveys be conducted by a qualified biologist during the appropriate timing to assess whether these species are present or near enough to any planned construction activities to be impacted. The survey results can then be used to identify appropriate mitigation, minimization, and avoidance measures which should be included in the final environmental document and inform any permitting needs. These identified measures should be made enforceable by inclusion in the final environmental document and made conditions of Project approval. Our specific 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 also 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 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).

Fully Protected Species: The Department also has jurisdiction over fully protected species of birds, mammals, amphibians, 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" for development of any kind. As mentioned above, the blunt-nosed leopard lizard is a fully protected species that is known to occur in the vicinity of the site and could use portions of the site for foraging or cover. The environmental document prepared for this Project should evaluate and address potential Project-related impacts to this species and should include appropriate avoidance, minimization, or mitigation measures.

Potential Project Impacts and Recommendations

Blunt-nosed Leopard Lizard (BNLL): Known occurrence records document BNLL in the near vicinity to the Project site. Because BNLL is fully protected and, therefore, no "take" incidental or otherwise can be authorized by the Department, protocol-level surveys should 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* (CDFG, 2004). Suitable habitat includes all areas of grassland and shrub scrub habitat that contains required habitat elements, such as small mammal burrows. These surveys, the parameters of which were designed to optimize detectability, should be conducted to reasonably assure the Department that "take" of this fully protected species will not occur as a result of Project implementation. 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. All survey results should be submitted to the Department for review.

San Joaquin Kit Fox (SJKF): There are California Natural Diversity Database (CNDDDB) occurrence records for the SJKF within one-half mile of the site. San Joaquin kit fox populations are known to fluctuate over time and presence/absence during any one survey year does not necessarily exclude the potential for kit fox to occur on a site at a future time. It is important to note that SJKF may even be attracted to the Project site by ground-disturbing activities and the storage of waste products there. The Department recommends that a pre-construction survey be conducted following the United States Fish and Wildlife Service's (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (USFWS, 2011) prior to any ground-disturbing or construction activities at the 45-acre processing plant site. Surveys should be conducted a maximum of 30 days prior to ground-disturbing activities and a biological monitor should be present at the excavation and disposal sites to observe if SJKF has moved into the area (i.e., burrow presence). 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." If "take" cannot feasibly be avoided, acquisition of a State ITP would be required prior to Project implementation. Mitigation measures for SJKF should be fully addressed in the adopted Final MND.

The Department also recommends consulting with the USFWS on potential impacts to this species. "Take" under the Federal Endangered Species Act (FESA) is more stringently 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.

Listed Rodent Species: Tipton kangaroo rat, short-nosed kangaroo rat, and Nelson's antelope squirrel are known to exist in the vicinity of the site, and may exist in the area of the planned plant expansion. In order to prevent the "take" of individuals of these species which may exist in below-ground burrows, the Department recommends that all burrows potentially occupied by these two species be avoided by a minimum of 50 feet. Biological monitors should be present during all ground-disturbing activities to ensure that "take" of these listed rodents does not occur. If the above minimization measures are not feasible, focused multi-night live trapping efforts should be conducted by appropriately permitted biologists. If the listed rodent species are detected, and the

potential for "take" cannot be avoided, the property owner should acquire an ITP pursuant to Fish and game Code Section 2081(b) prior to the planned ground-disturbing activities.

Burrowing Owl: Burrowing owls are known to occur in the vicinity of the site. If any ground-disturbing activities will occur in association with the plant expansion during the burrowing owl nesting season (approximately February through August), implementation of avoidance measures is required. The Department recommends following the preconstruction survey methodology developed by the California Burrowing Owl Consortium (CBOC, 1993) if the site contains burrows that could be used by burrowing owls. If nesting burrowing owls are found on or adjacent to the Project site, the Department's *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone (minimum 200 meters) 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 this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure. Impacts of this nature are violations of Fish and Game Code section 3503, 3503.5, 3513, and the Federal Migratory Bird Treaty Act.

If the Project proposes to evict burrowing owls that may be present, the Department recommends passive relocation during the non-breeding season. The CEQA document should specify how the impact of evicting owls would be mitigated to a less than significant level. The Department's *Staff Report on Burrowing Owl Mitigation* (CDFG 1995) recommends that foraging habitat be acquired and permanently protected to offset the loss of foraging and burrow habitat. The Department also recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting a burrowing owl.

Western Snowy Plover: The western snowy plover is known to have occurred in the vicinity of the site, and may nest and forage along the perimeter of the on-site wastewater retention ponds. The Department recommends that focused surveys be conducted by experienced individuals prior to initiating ground-disturbing activities in the vicinity of the on-site wastewater retention pond if those activities are conducted during the nesting season.

Other Nesting Birds: Nesting birds have the potential to exist on the Project site. If Project-related activities must occur during the breeding season (February through

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mid-September), surveys for active nests should be conducted by a qualified biologist no more than 30 days prior to commencing Project-related activities. A minimum no-disturbance buffer of 250 feet should be delineated around active 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. Mitigation measures for nesting birds should be fully addressed in the CEQA document prepared for the Project.

We recommend that a thorough analysis be conducted of the potential Project-related impacts to all the above habitat types and special status species. This is necessary to ensure the CEQA document prepared for the Project will adequately address all impacts to biological resources, and include the appropriate avoidance, minimization, and mitigation measures to reduce those impacts to less than significant. We appreciate the opportunity to provide guidance on this Project. If you have any questions on these issues, please contact Steven Hulbert, Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-47014, extension 289.

Sincerely,



Jeffrey R. Single, Ph.D.
Regional Manager

cc: United States Fish and
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Literature Cited

CDFG, 2012. *Staff Report on Burrowing Owl Mitigation*. California Department of Fish and Game. <http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>

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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. 2011