

NOTICE OF INTENT TO ADOPT VOLUNTARY LOCAL PROGRAM
AND
NOTICE OF AVAILABILITY FOR PUBLIC REVIEW

This notice is to advise that the California Department of Fish and Wildlife (CDFW) has prepared a Voluntary Local Program for the project identified below. As mandated by the California Code of Regulations, title 14, section 786.3, subdivision (d)(1), the minimum public review period for the Voluntary Local Program is thirty (30) days. A hard copy of the Voluntary Local Program is available for review at CDFW's Central Region office, 1234 East Shaw Avenue, Fresno, CA 93710 or CDFW can provide a pdf file of the Voluntary Local Program by email upon request to R4CESA@wildlife.ca.gov.

Voluntary Local Program Title: Tricolored Blackbird Voluntary Local Program (VLP)

Project Location: The VLP covers eight counties (Stanislaus, San Benito, Merced, Madera, Fresno, Kings, Tulare, and Kern) and comprises approximately 2,973,920 acres planted in grain crops associated with ranches and farms likely to provide nesting and foraging habitat for the State candidate for listing endangered tricolored blackbird (*Agelaius tricolor*).

Project Description: The VLP conveys authorization for take of tricolored blackbird, a species listed under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 et seq.), incidental to farmers' and ranchers' voluntary participation in the VLP. Participation in the VLP by farmers and ranchers in whose grain crops tricolored blackbirds nest provides the farmers and ranchers with access to technical assistance to implement colony protection management practices. Tricolored blackbirds nest in large colonies on approximately seven to ten dairies annually in the San Joaquin Valley. Additional colonies are found on a few farms growing grain crops in or near the Central Valley regularly. The VLP will provide take authorization to these farmers and ranchers who enroll and implement management practices to delay harvest and allow tricolored blackbird colonies to complete their nesting and fledging cycle. CDFW deemed the VLP complete on February 8, 2019, and must take final action on it within 75 days.

Public Comment: CDFW seeks written comments from the public regarding the plan and will be accepting written correspondence delivered to CDFW during the 30-day public review period that begins on February 22, 2019 and ends on March 25, 2019. Please send your comment/response to:

Julie A. Vance
Regional Manager
California Department of Fish and Wildlife
Central Region
1234 East Shaw Avenue, Fresno, CA 93710
R4CESA@wildlife.ca.gov

For additional information or questions regarding the VLP please contact:

Annee Ferranti
Environmental Program Manager
California Department of Fish and Wildlife
Habitat Conservation Program
Central Region
1234 East Shaw Avenue, Fresno, CA 93710
(559) 243-4005 Ext. 141
Annee.Ferranti@wildlife.ca.gov

Tricolored Blackbird

Voluntary Local Program

February 8, 2019

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1. Introduction

This Voluntary Local Program (VLP or Program) is entered into by and between the California Farm Bureau Federation (CFBF), working as the Program Administrator, and the Department of Fish and Wildlife (Department) as authorized by the Department's Voluntary Local Program regulations (Cal. Code Regs., tit. 14, § 786), which implement Fish and Game Code Article 3.5. Incidental Take Associated with Routine and Ongoing Activities (Fish & G. Code, § 2086 *et seq.*).

The Department recognizes the unique and important role that private landowners in California play in wildlife and habitat enhancement. Consistent with regulation, the purpose of the VLP "is to encourage farmers and ranchers engaged in agricultural activities to establish locally designed programs to voluntarily enhance and maintain habitat for endangered and threatened species." (Cal. Code Regs., tit. 14, § 786.0, subd. (a).). These activities are to be carried out on public and private lands while providing take authorization as a result of conservation efforts to increase numbers of, and provide habitat for, special status species on their lands.

Under the VLP, take of State endangered, threatened, or candidate species covered by the VLP and incidental to routine and ongoing agricultural activities is not prohibited by Division 3, Chapter 1.5 of the Fish and Game Code, as long as the take arises from routine and ongoing agricultural activities incorporating management practices covered under the VLP. In no case will authorized take include take of Tricolored Blackbirds (*Agelaius tricolor*) by shooting or by hazing after nesting has been established. The CFBF and the Department recognize that the VLP management practices, when successful, will increase the population of Tricolored Blackbirds, which could result in a higher number of birds in proximity to farms and ranches.

This VLP intends to protect farmers and ranchers from legal liability for take that may result from their voluntary participation in this VLP. This VLP specifically addresses liability for take under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 *et seq.*) and does not necessarily satisfy any other legal requirements. For example, entities proposing projects or practices that are subject to Fish and Game Code section 1600 *et seq.* must still notify the Department in accordance with section 1602 of the California Fish and Game Code; the components of an agreement entered into pursuant to the VLP may or may not coincide with any conditions of any required Lake or Streambed Alteration Agreement.

The VLP will assist farmers and ranchers when Tricolored Blackbirds nest in their grain crops by providing technical assistance to these landowners to implement colony protection management practices. Tricolored Blackbirds nest in large colonies on approximately seven to ten dairies annually in the San Joaquin Valley. Additional colonies are found on a few farms growing grain crops in or near the Central Valley regularly. The VLP will provide take authorization to these farmers and ranchers when they implement management practices to delay harvest and allow Tricolored Blackbird colonies to complete their nesting. The Natural Resources Conservation Service (NRCS) will provide technical assistance on projects covered under the VLP that are funded by the Farm Bill through oversight, planning, and monitoring of the projects.

This VLP was developed with input and participation by local landowners through community meetings and representation from the following agencies/organizations:

- Dairy Cares
- Sustainable Conservation
- Audubon California
- Natural Resources Conservation Service
- Western United Dairymen
- California Agricultural Commissioners and Sealers Association

Under the VLP, the Program Administrator and participating farmers and ranchers (Cooperators) will sign a Cooperative Agreement, in which each Cooperator agrees to voluntarily carry out management practices described in the VLP and their Cooperative Agreement and to abide by the terms and conditions set forth in the VLP and the take authorizations described below. Through participation in this VLP, as evidenced by a Cooperative Agreement, any take of Tricolored Blackbirds incidental to routine and ongoing agricultural activities is not prohibited for VLP participants, so long as the take occurs while the management practices required by this VLP and the Cooperative Agreement are being followed.

The VLP will remain in effect for 5 years and will expire April 24, 2024.

2. Area Description

a. Geographic Boundaries

The VLP would cover the following counties: Stanislaus, San Benito, Merced, Madera, Fresno, Kings, Tulare, and Kern (Table 1). The VLP serves persons conducting ranching and farming in the above counties where Tricolored Blackbirds may nest on specific types of grain fields.

b. Number of Acres Covered

The VLP will cover the counties of Stanislaus, San Benito, Merced, Madera, Fresno, Kings, Tulare, and Kern totaling 17,445,760 acres and containing approximately 10,451,894 acres of agricultural crops of which 2,973,920 acres are planted in grain crops associated with ranches and farms likely to provide habitat for Tricolored Blackbird. The crop types included in the VLP are grains grown for a variety of purposes and include barley; corn; oats; rye; triticale; wheat; winter wheat; durum wheat; forage; small grain hay; haylage, grass silage, and greenchop; and corn for silage or greenchop¹. Other crops that do not provide nesting habitat for Tricolored Blackbirds are not included in the VLP. Landowners enrolled 300-400 acres annually in colony protection programs in 2015-2018 authorized by California Code of Regulations, title 14, section 749.9, adopted by the California Fish and Game Commission (Commission) as an emergency regulation to authorize take during the Tricolored Blackbird's candidacy for listing under CESA, subject to certain terms and conditions prescribed by the Commission. The Commission's adoption of section 749.9 into Title 14 was based in part on authority provided by Fish and Game Code sections 399 and 2084. While the acres covered during the emergency action and Section 749.9 encompassed 20 counties; under the VLP, incidental take coverage will be reduced to 8 counties where Tricolored Blackbirds may nest on grain fields. Approximately 300-400 acres are expected to be covered in the VLP annually.

Table 1. Acreage of Covered Counties and Acres in Agriculture

Covered County	County Sq. Miles ²	County Acreage	Acres in Agriculture (2016) ³
Stanislaus	1,495	956,800	829,783
San Benito	1,389	888,960	671,685 (2014)
Merced	1,935	1,238,400	1,152,990
Madera	2,137	1,367,680	759,477
Fresno	5,958	3,813,120	2,192,456 (2014)
Kings	1,389	888,960	818,082
Tulare	4,824	3,087,360	1,298,053
Kern	8,132	5,204,480	2,729,368
Total	27,259	17,445,760	10,451,894

¹ Acreage amounts for crop types are listed in Appendix B

² California State Association of Counties. <http://www.counties.org/pod/square-mileage-county>

³ Department of Conservation. Farmland Mapping and Monitoring Program. 2016.

c. Habitat Enhancement Opportunities and Constraints

Enhancement Opportunities

The Commission voted to list Tricolored Blackbird as a threatened species under CESA at its meeting in Ventura, California on April 19, 2018. With over 90 percent of the species' historic habitat, wetlands and uplands in the Central Valley, replaced by agriculture or urbanization, Tricolored Blackbirds now nest in agricultural grain fields, the Central Valley's remaining managed wetlands, and a small number of upland plant species including Himalayan blackberry. The grain fields managed by farmers and ranchers to provide feed for their cows provide habitat for significant numbers of Tricolored Blackbirds. Seven to ten large Tricolored Blackbird colonies occupy grain fields annually during mid-February to mid-June, creating a conflict with farmers' harvest timing. This VLP aims to protect Tricolored Blackbird colonies on grain fields by granting take authorization to Cooperators who participate in Department-approved harvest management programs. The approved harvest management programs require farmers and ranchers to manage their fields to benefit nesting Tricolored Blackbirds and maintain nesting habitat until the young have fledged.

Constraints

The primary constraints to habitat protection on farms is funding availability to cover the cost of the lost crop and communications with owners if a colony is identified near to the planned harvest date.

d. Covered Species

This VLP provides take authorization for Tricolored Blackbird (*Agelaius tricolor*), a species designated as threatened pursuant to CESA (Fish and Game Code, § 2050 et seq.).

e. Federal and State Special Status Species Likely to Benefit

It is unlikely that listed species other than Tricolored Blackbird are likely to benefit from this VLP.

f. Reasonably attainable interim targets and long-range goals for increasing the quantity and quality of habitat through the VLP area

The long-range goals, as well as annual interim target, for the VLP is consistent 100 percent participation in Tricolored Blackbird colony protection on grain fields and utilization of technical assistance to avoid and minimize take and support the economic activities of the farmers and ranchers.

3. Designated Representative

The CFBF will be the designated representative and Program Administrator. Audubon California will enter into a Memorandum of Understanding with CFBF to assist in biological monitoring and annual reporting.

The CFBF is a nonprofit organization of farmers and ranchers consisting of county Farm Bureaus from nearly every county in California, established in 1919 to work for the betterment of family farmers and ranchers in California. CFBF's mission is to improve the well-being and quality of life for California farmers and ranchers. This is accomplished through advocacy, ongoing outreach, and economic services and products for those involved in agricultural production.

CFBF's contact for the VLP is Noelle Cremers, Senior Policy Advocate, 1127 11th Street, Suite 626, Sacramento, CA 95814, (916) 446-4647 or ncremers@cfbf.com. Electronic communications are preferred.

4. Management Practices and Routine and Ongoing Agriculture Activities

a. Management Practices

Pursuant to Fish and Game Code section 2086 and California Code of Regulations title 14, section 786.1, subdivision (a), a VLP must include measures to avoid and/or minimize impacts to candidate, threatened, and endangered species. These measures take the form of "management practices" that provide standard measures for avoidance of take of the Tricolored Blackbirds, but do not cover all possible measures that may be used. As set forth in California Code of Regulations, title 14, section 786.1, subdivision (a), "management practices" are practical, achievable agricultural practices that, to the maximum extent practicable, avoid and minimize the take of candidate, threatened or endangered species while encouraging enhancement of wildlife habitat without compromising the economics of agricultural operations when undertaken by a farmer or rancher.

The Management Practices described herein for harvest of grain crops were developed using the Department's Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015 (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>) and the regulation adopted by the California Fish and Game Commission for Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period (Cal. Code Regs., tit. 14, § 749.9). The Management Practices included and covered under this VLP establish buffer zones and harvest dates to allow Tricolored Blackbirds to complete their nesting cycle when they occupy a grain field, representing the best available scientific information.

The list below summarizes the management practices included and covered under this VLP. Appendix A describes these practices more fully so that take of candidate, threatened, and endangered species can be avoided or minimized. The practices included in Appendix A are the only practices which the VLP recognizes.

- i. Establish buffer zone around nesting Tricolored Blackbird colonies and harvest only outside of buffer zone
- ii. Delay harvest of field with nesting Tricolored Blackbird colonies until young have fledged

b. Routine and Ongoing Agricultural Activities

Enrollment in the VLP authorizes take of Tricolored Blackbirds incidental to routine and ongoing agricultural activities only if the take occurs while in compliance with selected management practices regarding delayed harvest to protect nesting colonies of Tricolored Blackbirds and in accordance with the approved Cooperative Agreement. It is expected that between 300-400 acres of nesting habitat will be maintained annually under the VLP.

The Department defines routine and ongoing agricultural activities practices in California Code of Regulations, title 14, section 786.1, subdivision (b) as:

"[r]outine and ongoing agricultural activities" shall include the cultivation and tillage of the soil; crop rotation; fallowing; dairying; the production, cultivation, growing, replanting and harvesting of any agricultural commodity including viticulture, vermiculture, apiculture, or horticulture; the raising of livestock, fur bearing animals, fish, or poultry; any practices performed by a farmer on a farm as incident to or in conjunction with those farming operations, including the preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market, including any such activities recognized as compatible uses pursuant to the Williamson Act (Gov. Code § 51200 et seq.) provided such activities are consistent with the economics of agricultural operations; and other similar agricultural activities. Routine and ongoing agricultural activities do not include conversion of agricultural land to nonagricultural use, timber harvesting activities governed by the State Board of Forestry or activities that intentionally reduce habitat and wildlife to facilitate conversion to nonagricultural use.

The following is a list of routine and ongoing activities associated with agriculture that are afforded take coverage under the VLP. This list of routine activities is not exhaustive and serves merely to provide guidance to Cooperators as to the type of activities that are anticipated to be covered under the VLP. Activities that are not listed below will be reviewed by the Program Administrator and the Department to determine if the activities are appropriate for coverage under the VLP. In no case will shooting to discourage blackbirds from congregating on agricultural lands (including rice crops) be covered under the VLP. For the purposes of this VLP the conversion of rangeland to more intensive agricultural uses, such as permanent crops, is not considered a routine and ongoing agricultural activity. Routine activities may vary from one ranching and farming operation to another and vary with changing environmental and economic conditions.

Routine and ongoing agricultural activities for which a Cooperator will receive take authorization under their participation in the VLP will be listed in the Cooperative Agreement. The CFBF and the Department recognize that these are routine and ongoing agricultural activities that cannot be monitored as part of the VLP. Cooperators will provide self-certification that they will implement the routine and ongoing agricultural activities as they are described below to prevent impacts to Tricolored Blackbirds as part of the authorization of the Cooperative Agreement. Additionally, Cooperators will allow monitoring in compliance with their Cooperative

Agreement. The following routine and ongoing agricultural activities are covered activities under the VLP.

- i. Harvest of any crops outside of the designated colony buffer area.
- ii. Use of vehicles on the farm for management activities.
- iii. Movement of livestock outside of the designated colony buffer area.
- iv. Irrigation practices.
- v. Management of livestock waste.
- vi. Mixing and distribution of feed to livestock.
- vii. Crop monitoring and management.
- viii. Other routine activities documented and agreed to in the Department-approved template Cooperative Agreement.

These activities could cause disturbances or direct take of individuals; but they will occur outside of the established buffer zone to minimize possible impacts.

This list of routine activities is not exhaustive and serves merely to provide guidance to Cooperators as to the type of activities that are anticipated to be covered under the VLP. The Program Administrator and Department will review activities that are not listed in Appendix A to determine if the activities are appropriate for coverage under the VLP.

These above listed Covered Activities will provide flexibility to maximize farmer participation in Tricolored Blackbird colony protection programs and gain maximum wildlife benefits without compromising the economics of agricultural operations.

5. Environmental Analysis

In approving this VLP, the Department relied for purposes of the California Environmental Quality Act (CEQA)(Pub. Resources Code, §21000 et seq.) on the Class 7 categorical exemption for agency actions to protect natural resources and the environment.

6. Administrative Plan

a. Process for Persons to Enter into a Cooperative Agreement

Farmers and ranchers within the VLP area (see Figure 1) who are working cooperatively with CFBF and who are interested in voluntarily protecting Tricolored Blackbird colonies on grain fields will enter into a Cooperative Agreement with CFBF that will outline the covered management activities. Persons interested in participating in the VLP will contact CFBF by phone or email to request creation of a Cooperative Agreement for their farm. Persons interested in voluntarily participating in the VLP will enter into a Cooperative Agreement annually, upon identification of a colony of Tricolored Blackbirds in their field(s). The specific management practices and routine

and ongoing activities that a Cooperator is authorized to implement under the VLP will be included in the Cooperative Agreement by CFBF. CFBF will create a template Cooperative Agreement for persons agreeing to protect colonies nesting in agricultural fields. The template Cooperative Agreement will be submitted to the Department for written approval prior to its use with Cooperators. Any future changes to the approved agricultural Cooperative Agreement template shall be reviewed and approved in writing by the Department prior to use.

CFBF may delegate select duties as outlined in the Memorandum of Understanding to Audubon California, including but not limited to, monitoring colonies and drafting portions of the annual report. The Memorandum of Understanding shall be reviewed and approved by the Department in advance of execution.

b. Lands Eligible for Enrollment

All private lands in the specified geographic boundaries are eligible for enrollment in the VLP.

c. Persons Eligible for Participation in the VLP

- i. Private landowners who are farmers and ranchers.
- ii. Lessees of private lands who are farmers or ranchers. Take authorization can only be applied to activities implemented by the lessee for the duration of the lease AND only on lands that are covered under the lease.

d. Record Keeping Process to Ensure Participant Confidentiality

- i. CFBF will work with the person who is voluntarily entering into the VLP.
- ii. CFBF will create a template Cooperative Agreement for approval by the Department for colony protection on agricultural fields owned or leased by the Cooperator. Cooperative Agreements which do not deviate from the template will not require subsequent approval from the Department. Any changes to the approved template will be reviewed and approved in writing by the Department prior to use.
- iii. CFBF will work with the person, NRCS and/or other partners to complete a Cooperative Agreement that includes:
 - A. The specific management practices that will be covered under the Agreement;
 - B. Specific provisions for implementation of the appropriate management practices;
 - C. Specific provisions for monitoring of implementation of management practices;

- D. Any applicable reporting or documentation of compliance or non-compliance; and
 - E. Signed acknowledgement that withdrawing from the Cooperative Agreement eliminates authorized take of Tricolored Blackbirds for routine and ongoing agricultural activities.
- iv. All records and Cooperative Agreements will be kept in a secure, locked cabinet at CFBF's office.
 - v. To become effective, a copy of the Cooperative Agreement must be provided to the Department.
 - vi. The Department may request access to additional records related to the VLP and Cooperative Agreements by scheduling a visit with the Program Administrator to view files and information pertinent to participation in the VLP. The Department will not be authorized to take any information from the files unless otherwise authorized in writing by an individual landowner specifically for that purpose.
 - vii. Any person, individual, or their agents, including the Designated Biologist (see Section 7) seeking incidental take authorization under the VLP, shall report their participation in an approved harvest management program to the Department prior to grain harvest via telephone call to the Department's Central Region representative within one business day of enrollment followed up with an email within two business days of enrollment into the VLP.
 - viii. Any person, individual, or their agents, for which incidental take of Tricolored Blackbirds is authorized pursuant to the VLP, shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Central Region Representative by August 1 during the life of the VLP. Information reported to the Department pursuant to the VLP shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the Tricolored Blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged.
 - ix. All site-identifying information generated by CFBF, NRCS, individual Cooperators, and monitors in the course of participation in the VLP that identifies or indicates the existence of endangered, threatened or otherwise protected species or their habitat on a particular farm or ranch including, but not limited to observations, records, correspondence and communications, shall be confidential to the extent permitted by the Public Records Act and other applicable laws. Confidential information may only be used or shared as necessary for the administration, approval, denial, or termination of the VLP or a Cooperative Agreement, or as otherwise required by law (such as the Public Records Act) unless the release of information is authorized in writing by an individual landowner specifically for that purpose.

e. Developing, Reviewing and Revising Management Activities

Development of the management practices and routine and ongoing agricultural activities associated with agricultural and rangelands that are covered under the VLP will, to the maximum extent practicable, avoid and minimize take of Tricolored Blackbirds, while encouraging the protection of colonies. The VLP will be assessed on an as-needed basis to verify the practices and activities listed as implemented are meeting the intent of the VLP. Assessments will be completed at the request of the Department or as determined necessary by CFBF with input from NRCS.

As part of the assessments completed, CFBF and Department staff will assess the effectiveness of the VLP by evaluating the number of Cooperators participating, the number of birds and acres of crops supporting each colony protected, and the effectiveness of the practices for protecting colonies while avoiding impacts to Tricolored Blackbirds. Assessments will be included in the annual report and any necessary review and/or revisions will be completed in accordance with the Amendment process.

f. Annual Process

i. CFBF will complete and submit to the Department by December 31 of each year an annual report that will include:

- A. Summary of the acreage benefiting from the VLP and total number of participants;
- B. Summary of the management practices included in the Cooperative Agreements;
- C. Summary of the success of the management practices listed;
- D. Summary of the number of non-compliance events;
- E. Summary of Tricolored Blackbirds encountered during management activities, including:
 - 1) Total numbers encountered; and
 - 2) Locations encountered on a sub-watershed level;
- F. Recommendations, if any, on how to further improve voluntary participation by farmers and ranchers and further improve benefits to wildlife;
- G. Assessment by NRCS staff and/or Designated Biologist that the practices and activities being utilized for the VLP are meeting the intent to avoid and minimize take and enhance habitat; and
 - 1) The annual report shall not include site-specific information generated by the VLP or an individual landowner that identifies or indicates the existence of Tricolored Blackbirds or their habitat on a particular farm or ranch unless the release of information is authorized in writing by an

individual landowner specifically for that purpose or required as part of compliance, as described in the record keeping process above.

- ii. The Department shall make the annual report available to interested members of the public via posting on its website by January 31 each year.

g. Cooperative Agreement Monitoring/Revocation/Termination

As the designated representative, CFBF has the responsibility to ensure compliance by all Cooperators enrolled in the VLP. The procedure for monitoring Cooperators' compliance and revoking Cooperative Agreements in the event Cooperators do not comply is set forth below:

- i. Within five business days of becoming aware that a Cooperator or their agent(s) (e.g., contractors, labor) are not carrying out work consistent with the VLP management practices' design, installation, and monitoring and maintenance specifications, CFBF shall notify the Cooperator in writing (Initial Contact) and, if possible, work directly with the Cooperator to resolve the noncompliance. If resolution of noncompliance is not possible, the Cooperative Agreement and take authorization provided under the VLP shall be revoked. Concurrent with the written notification to the Cooperator, CFBF shall notify the Department. The Department then has the opportunity to notify CFBF what additional measures, if any, may be taken to bring the Cooperator into compliance prior to proceeding with revocation. If the Department revokes the Cooperative Agreement, the Department will issue, in writing to CFBF, a request to revoke and terminate the subject Cooperative Agreement. CFBF will then notify the Cooperator in writing, with a copy to the Department that the Cooperator's activities are inconsistent with the procedures contained in the Cooperative Agreement.
- ii. If the Cooperator has not complied within three business days of the Initial Contact or resolution of noncompliance is not possible, CFBF shall notify the Cooperator in writing regarding the non-compliance and shall indicate that revocation and termination of the Cooperative Agreement will commence immediately. Concurrent with the written notification to the Cooperator, CFBF shall notify the Department that termination of the Cooperative Agreement has occurred.
- iii. The Cooperative Agreement is thereby terminated, and the Cooperator's actions are no longer covered by the VLP. CFBF shall then have no further responsibility to enforce the conditions and shall not be held responsible for their implementation. The Cooperator shall be held directly liable for all violations and will have to individually obtain all necessary permits, approvals, and/or rights from the agency(ies), and to comply with all laws and ordinances.

7. Take Authorization

Cooperators, through enrollment in the VLP, authorized by California Code of Regulations., title 14, section 786, via execution of a Cooperative Agreement, receive take authorization for Tricolored Blackbirds incidental to routine and ongoing agricultural activities associated with farming and ranching if the take occurs on lands covered by the VLP during implementation of the covered management practices. CFBF and the

Department recognize that implementation of the covered management practices under the VLP may increase the number of individual Tricolored Blackbirds in proximity to ranches and farms as a result of management practices. Take of Tricolored Blackbirds by Cooperators incidental to otherwise lawful activities are not prohibited under the following circumstances:

- a. Take occurs while implementing the covered management practices identified in the Cooperative Agreement.
- b. Take occurs while the Cooperator is conducting the routine and ongoing agricultural activities on the Enrolled Property after the management practices identified in the Cooperative Agreement have been initiated and with which Cooperator is in full compliance.
- c. Take occurs while a Department-approved Designated Biologist(s) monitor(s) active Tricolored Blackbird breeding colonies. The Department will approve a Designated Biologist(s) in advance and in writing. The Designated Biologist(s) will have demonstrated experience and knowledge of the biology and the ecology of Tricolored Blackbird.

8. VLP and Take Authorization Duration

The VLP becomes effective upon approval by the Department and shall be in effect for 5 years, unless terminated prior to that date. Notwithstanding any expiration of the VLP, Cooperative Agreements developed pursuant to this Agreement will be applied for annually to coincide with the arrival and establishment of a nesting colony, will remain in effect for 1 year, and will be monitored. Prior to approving a Cooperative Agreement, the Authorization of take of Tricolored Blackbirds pursuant to a Cooperative Agreement begins upon initiation of the management practices specified in the subject agreement. Cooperators may withdraw their Cooperative Agreement from the VLP at any time without penalty if they are adhering to withdrawal procedures; however, the take authorization will no longer apply once Cooperators withdraw from the VLP. After 5 years, the VLP will be reviewed and may be extended by mutual consent of CFBF and the Department with appropriate public review and comment.

9. VLP Amendments

The Program Administrator or the Department may propose amendments to this VLP by providing written notice to, and obtaining the written concurrence of, the other party. Such notice shall include a statement of the proposed amendment, the reason for it, and its expected results. The Parties will respond to proposed amendments as indicated below. Proposed amendments will become effective upon the other party's written concurrence and completion of appropriate environmental analysis.

- a. Amendment proposed by the Program Administrator: The Program Administrator may initiate an amendment by providing the Department with the necessary information for review.
 - i. Minor Amendments. The Department Director shall approve and incorporate or deny minor amendments (as defined in Cal. Code Regs., tit. 14, § 786.4, subd. (a)(1)) initiated by the Program Administrator within 30 days of submission.

- ii. Major Amendments. The Department will respond to major amendments (as defined in Cal. Code Regs., tit. 14, § 786.4, subd. (a)(2)) initiated by the Program Administrator according to the process established in this article for a new VLP, except that the information and analysis provided in support of an application for a major amendment may rely on supplemental information to the analysis used in the initial submittal for the Program Administrator.
- b. Amendment proposed by the Department: The Department may initiate an amendment to the Tricolored Blackbird VLP if it believes that an amendment is necessary to bring the VLP into compliance with section 2086, subdivision (b) of the Fish and Game Code or any other relevant provision of law.
 - i. Minor Amendments. The Department shall notify the Program Administrator in writing of the proposed minor amendment and give the Tricolored Blackbird VLP participants 60 days to accept or decline the proposed minor amendment. If the Program Administrator declines the amendment the Department may initiate steps to terminate the VLP or allow individuals to withdraw. If the Program Administrator accepts the amendment or fails to respond within the 60 days, the Department may approve the minor amendments with no further consultation.
 - ii. Major amendments. The Department must make a finding that the Tricolored Blackbird VLP is not in compliance with section 2086, subdivision (b), or any other section of the Fish and Game Code and state its rationale. The Program Administrator shall be notified in writing of the findings and rationale and be given 60 days to respond to deficiencies outlined by the Department unless immediate action is necessary to prevent unauthorized take. If the Program Administrator fails to amend the VLP, as directed by the Department, the Department may initiate steps necessary to terminate the Tricolored Blackbird VLP and allow individuals to withdraw from the Tricolored Blackbird VLP.

10. Termination of Agreements

- a. Cooperative Agreement:
 - i. A Cooperator may withdraw his/her Cooperative Agreement from the VLP for any reasons by giving written notice not less than 14 days in advance to the Program Administrator and adhering to the applicable withdrawal procedures.
 - ii. By withdrawing, the Cooperator acknowledges in writing that the take of Tricolored Blackbirds for routine and ongoing agricultural activities is no longer authorized by the VLP.
- b. Voluntary Local Program:
 - i. The Program Administrator may terminate the VLP for any reason by giving written notice of not less than 120 days in advance to the Department. The Program Administrator shall give advance notice of not less than 120 days to enrolled Cooperators. Enrolled Cooperators shall continue to receive take authorization until withdrawal has been completed.

- ii. If the Department terminates the VLP because it no longer complies with section 2086, subdivision (b) of the Fish and Game Code, termination shall be conducted consistent with the terms and conditions detailed in section 786.2, subdivision (d)(9). Enrolled Cooperators following the terms and conditions of withdrawal shall continue to receive take authorization until withdrawal has been completed.
- iii. If the Program Administrator is unable to perform its obligations under this VLP, the Program Administrator will give written notice to the Department at least 120 days prior to ceasing to perform its obligations under the Agreement. Upon receiving such notice, the Department may, at its discretion after consultation with Cooperators, either amend this VLP and the associated take authorizations to substitute a new Program Administrator, or, if the Department agrees and a Cooperator prefers, convert any previously approved Cooperative Agreement into an individual VLP between the Cooperator and the Department under the same terms. Such an amendment shall follow the procedures described in Section 9 above.

11. New Listing of Species

This VLP only grants take authorization for Tricolored Blackbirds and does not apply to additional species subsequently listed as candidate, threatened, or endangered under CESA.

12. Other Measures

- a. Remedies. No party shall be liable in monetary damages for any breach of this VLP, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.
- b. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes. Amendment to the VLP shall follow the procedures detailed in Section 9 above.
- c. Succession and Transfer. If a Cooperator transfers his or her interest in the Enrolled Property to another non-Federal entity, the Department will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the original Cooperator, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Cooperator.
- d. No Third-Party Beneficiaries. This VLP does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this VLP to maintain a suit for personal injuries or damages pursuant to the provisions of this VLP. The duties, obligations, and responsibilities of the Parties to this VLP with respect to third parties shall remain as imposed under existing law.
- e. Other Laws. This VLP and activities conducted under it are subject to all applicable federal, state, and local laws and regulations.

13. Notices and Reports

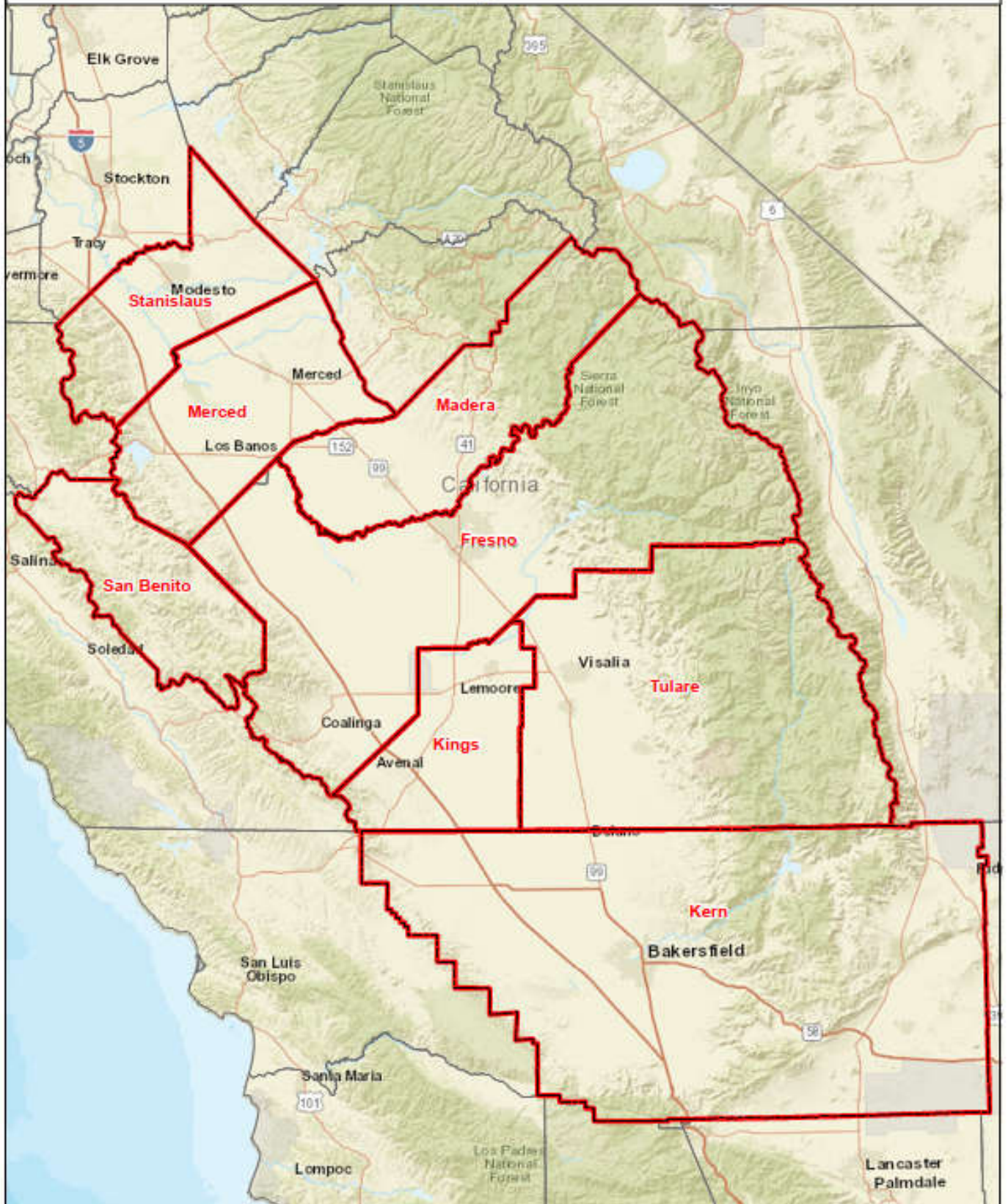
Any notices and reports, including monitoring and annual reports will be delivered to the persons listed below, as appropriate:

Noelle Cremers, California Farm Bureau Federation, 1127 11th Street, Suite 626, Sacramento, CA 95814, (916) 446-4647 or ncremers@cfbf.com.

Julie Vance, Central Region Regional Manager, Department of Fish and Wildlife, 1234 E. Shaw Ave., Fresno, CA 93710, (559) 243-4005 or Julie.Vance@wildlife.ca.gov.



Voluntary Local Program Area Figure 1



Appendix A

List of Management Practices and Routine and Ongoing Agricultural Activities

California Fish and Game Code section 2086 requires that voluntary local programs include measures to avoid and/or minimize impacts to candidate, threatened, and endangered species. These management practices are designed with avoidance and minimization measures that provide standard measures for avoidance of take of Covered Species (Tricolored Blackbird) but do not cover all possible measures that may be used. The management practices were developed in consultation with the United States Fish and Wildlife Service (USFWS), Department of Fish and Wildlife (Department), and Natural Resources Conservation Service (NRCS) biologists, and species experts using the best scientific information available. The management practices are intended to be flexible, avoid or minimize take of listed species, and maximize wildlife benefits while minimizing the economic impact on the Cooperators' agricultural operations.

Cooperators will implement the appropriate management practices associated with each activity covered under the VLP. Each Cooperative Agreement will specify the management practices that will be carried out on the enrolled property and include a timetable for implementing the identified activities.

This VLP specifically addresses liability for take under CESA and does not necessarily satisfy any other legal requirements. For example, Cooperators proposing projects or practices that are subject to Fish and Game Code section 1600 et seq. must still provide a separate notification to the Department prior to engaging in any regulated activities in lakes or streams.

Program Administrator shall submit to the Department in writing the name, qualifications, business address, and contact information of the biological monitor(s) (collectively, "Designated Biologists") at least 14 days before issuing cooperative agreements. Program Administrator shall ensure that all Designated Biologists are knowledgeable and experienced in the biology, natural history, and survey of the Covered Species. The Designated Biologist shall be responsible for monitoring management practices to help minimize or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Program Administrator shall obtain written Department approval (email is acceptable) of Designated Biologists before starting management practices and shall also obtain advance written approval if additional or new Designated Biologist(s) are needed, prior to these Designated Biologists conducting any monitoring of management practices during Covered Activities.

Management Practices for Harvest of Grain Crops Under Harvest Management Program to Protect Colonies

a. Overview

Take of Tricolored Blackbird incidental to harvest of grain fields and related agricultural activities is authorized where a rancher or farmer participates in a harvest management program administered by the NRCS. The harvest management program shall include the establishment of a buffer zone and harvest date as described below. The rancher or farmer seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest

and related agricultural activities from NRCS, the Department, or a Designated Biologist authorized by the Department. This authorization must be obtained before proceeding with any harvest activities that could take Tricolored Blackbirds. Failure to receive authorization to proceed before harvest activities commence will be considered noncompliance with the VLP whereby the Department may immediately revoke and terminate the subject Cooperative Agreement.

b. Buffer Zone

Harvesting of fields up to the edge of established breeding colonies is known to have caused colony abandonment. In order to prevent take, it is advisable to avoid intensive disturbances (e.g., heavy equipment operation associated with harvesting) or other activities which may cause nest abandonment or forced fledging within 100 feet (buffer zone) of an active breeding colony. Implementation of this buffer zone distance when attempting to avoid disturbance of breeding colonies due to harvesting activities has successfully resulted in little to no disturbance. A written request (email will suffice) to the Department by the Designated Biologist for a variance from the 100-foot buffer zone may be made when there is a compelling biological or ecological reason to do so. The request for the variance in the buffer zone will be reviewed by the Department within one business day of receiving the request and the Department provide in writing (email will suffice) an approval to implement the buffer zone variance or the denial of the buffer zone variance. Implementation of the buffer zone variance without written advance Department approval will be considered noncompliance with the VLP.

In some situations, in order to avoid take, the buffer zone insulating the colony from disturbance causing activities will need to be larger, depending on configuration of the field and the colony location and extent within the field. For example, when young fledglings are present, a larger buffer zone between the colony site and harvesting activities would be more likely to avoid take, because young fledglings are weak fliers and may be susceptible to disorientation once leaving the nest. The buffer zone guidance beginning at 100 feet assumes that harvesting activities near a Tricolored Blackbird colony are brief and occur on a single occasion. The buffer zone may need to be increased to avoid take if additional or recurring harvesting or other agricultural activities will occur or if harvest or other agricultural activities are likely to occur during sensitive nesting periods (e.g., during nest building, egg laying, and when nestlings have reached seven days of age). For example, construction activities have often been restricted within 300 feet of an active breeding colony. Many Tricolored Blackbird breeding colonies expand over time as additional birds are recruited at the edges of established colonies. For this reason, it is important to reassess the extent of a breeding colony before conducting harvesting activities.

c. Harvest Date

The date at which a field hosting a Tricolored Blackbird breeding colony can be harvested to avoid take has often been determined through estimation of the nesting stage of the breeding colony. Visual estimates from outside the colony or walking survey transects through a portion of the colony have been used to estimate nesting stage of breeding colonies. Walking transects are more likely to provide accurate estimates of nest stage across the entire extent of the colony, but this method may have adverse effects and colony entry requires authorization from the Department. Based on observed nests or behavior of adult birds, the earliest possible stage of individual nests in a colony

is estimated (nest building, egg laying, incubation, or nestlings). For purposes of estimating possible fledge date (and to ensure take is avoided), nests are assumed to be at day one of whichever nest stage is observed; this assumption can be relaxed if qualified observers have additional information that allows more precise estimation of stage. Based on the estimate of the earliest nest stage for a colony and known breeding phenology for Tricolored Blackbirds, an estimated date at which young will fledge is obtained. The following example of this estimation method assumes that adult Tricolored Blackbirds are observed carrying nesting material into a colony: because nest building typically takes four days, egg laying typically occurs over 3-4 days, incubation occurs over 12 days, and nestlings fledge 12-14 days after hatching, fledging will typically occur about 31-34 days after nest building begins (Meese et al. 2014). In setting a potential harvest date, additional days should be added to ensure all young have fledged and young fledglings that are dependent on parents for food have the ability to disperse from the breeding site; this may add an additional week or more before harvest can occur. In establishing a harvest date that will avoid take, this method of estimation requires that nesting of birds within the colony is synchronous and that additional birds do not initiate nesting once the nest stage is estimated. Because of the size of breeding colonies and the density and concealed nature of nests within a colony, it is difficult to determine whether either of these assumptions are valid, and in fact it is known that many large colonies on agricultural fields are not completely synchronous. Only Department approved Designated Biologists may make a determination that all nests have fledged young and the breeding colony is no longer active. In the absence of thorough colony monitoring, the only way to ensure that all nests in a colony have fledged young is to delay harvesting until the end of the breeding season; usually the end of June in the San Joaquin Valley (Meese et al. 2014). Colony site abandonment can occur for other reasons, such as intense nest predation or other natural impacts to nesting substrate, but as with determinations of fledging, only Department approved Designated Biologists should make a finding that a colony site has been abandoned.

d. Reporting.

Any person, individual, or their agents seeking incidental take authorization under the VLP, shall report their participation in an approved harvest management program to the Department prior to grain harvest. The Designated Biologist will accomplish participation notification by contacting by telephone the Department's Central Region representative within one business day of enrollment followed up with an email within two business days of enrollment into the VLP.

Any person, individual, or their agents, for which incidental take of Tricolored Blackbirds is authorized while implementing management practices for harvest of grain crops, shall report observations and detections of Tricolored Blackbird colonies, including take, to the Department's Central Region by the completion of colony nesting or site abandonment by August 1 throughout the life of the VLP. Information reported to the Department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the Tricolored Blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, or their agents seeking incidental take authorization shall report their participation in an approved harvest management program to the Department prior to grain harvest. This information shall be kept confidential by the Department pursuant to Section 6(d) of the VLP, unless the person grants a release in writing of the information provided to the

Department or unless the Department is required to release the information pursuant to the Public Records Act.

Ongoing Agricultural Activities for Grain Crops

The following is a list of routine and ongoing activities associated with agriculture that are afforded take coverage under the VLP. This list of routine activities is not exhaustive and serves merely to provide guidance to Cooperators as to the type of activities that are anticipated to be covered under the VLP. Activities that are not listed below will be reviewed by the Program Administrator and the Department to determine if the activities are appropriate for coverage under the VLP. In no case will shooting or other active hazing activities to discourage blackbirds from congregating on agricultural lands be covered under the VLP. Passive hazing through the use of audio, visual, or mechanical devices may be allowed if take would not occur when hazing is employed prior to the establishment of nests. The use of live predators or remote-control predator devices is not covered under the VLP. For the purposes of this VLP, the conversion of rangeland to more intensive agricultural uses, such as permanent crops, is not considered a routine and ongoing agricultural activity, and therefore is not covered by this VLP. Routine activities may vary from one ranching or farming operation to another and vary with changing environmental and economic conditions.

Routine and ongoing agricultural activities that a Cooperator will receive take authorization for under their participation in the VLP will be listed in the Cooperative Agreement. CFBF and the Department recognize that these are routine and ongoing agricultural activities that cannot be monitored as part of the VLP. Cooperators will provide self-certification that they will implement the routine and ongoing agricultural activities as they are described below to prevent impacts to Tricolored Blackbirds as part of the authorization of the Cooperative Agreement. Additionally, Cooperators will allow monitoring in compliance with their Cooperative Agreement. Routine and ongoing agricultural activities include:

- a. Harvest of any crops outside of the designated colony buffer area;
- b. Use of vehicles on the farm for management activities;
- c. Movement of livestock outside of the designated colony buffer area;
- d. Irrigation practices;
- e. Management of livestock waste;
- f. Mixing and distribution of feed; and
- g. Other routine activities documented and agreed to in the Department approved template Cooperative Agreement.

Biological Monitoring

The VLP authorizes take of Tricolored Blackbirds by Department approved Designated Biologist(s) for specific monitoring activities that are following set conditions. Take outside of these situations would not be covered by the VLP and would require separate permits by the Department.

Authorized Monitoring Activities:

- a. Approaching external edges of colony sites to determine the extent of a field occupied by breeding blackbirds;
- b. Conducting transects of colony sites once nesting is assumed to be complete to confirm whether all young have fledged and fledglings are no longer dependent on the field; and
- c. Conducting transects of colony sites that are suspected to have failed and been abandoned to confirm no breeding birds or young remain.

Conditions on authorized monitoring activities include:

- A. Before entering a colony site, blackbird activity shall be observed for at least 30 minutes in order to determine whether colony extent and nesting stage can be assessed without colony entry.
- B. Where observations of blackbird behavior allow for estimation of the extent of a breeding colony, the edges of the colony will not be approached.
- C. If active nests (sitting adults, eggs, or young) are encountered while delineating the extent of the colony or while walking transects to confirm no birds are present, the biological monitor will exit the colony and re-tracing steps.

Appendix B
Estimated Acreage Eligible for Participation in VLP

Covered County	Corn	Small Grains¹	Forage²	Small Grain Hay	Haylage, Silage, and Greenchop (Not from corn)	Corn for Silage or Greenchop	Total Crop Acreage
Fresno	4,183	136,763	90,491	14,967	28,178	32,438	307,020
Kern	4,598	89,986	76,305	8,291	21,338	27,855	228,373
Kings	8,486	112,164	81,345	20,008	40,180	60,904	323,087
Madera	2,104	8,825	35,554	7,198	16,520	22,266	92,467
Merced	19,555	58,769	129,575	33,446	78,477	91,880	411,702
San Benito	12	577	6,207	4,989	18	0	11,803
Stanislaus	4,911	13,832	69,986	28,078	42,195	61,794	220,796
Tulare	15,873	80,305	163,358	34,899	124,428	113,645	532,508
Total	59,722	501,221	652,821	151,876	351,334	410,782	2,127,756

¹ Small Grains include barley, oats, rye, triticale, and wheat

² Forage: Feed for livestock composed of plants grown for haying or grazing (US Department of Agriculture)

Covered County	County Sq. Miles ^[1]	County Acreage	Total Acres in Agriculture (2016) ^[2]	Corn	Small Grains ^[3]	Forage ^[4]	Small Grain Hay	Haylage, Silage, and Greenchop (Not from corn)	Corn for silage or greenchop	Total
Fresno	5,958	3,813,120	2,192,456 (2014)	4,183	136,763	90,491	14,967	28,178	32,438	307,020
Kern	8,132	5,204,480	2,729,368	4,598	89,986	76,305	8,291	21,338	27,855	228,373
Kings	1,389	888,960	818,082	8,486	112,164	81,345	20,008	40,180	60,904	323,087
Madera	2,137	1,367,680	759,477	2,104	8,825	35,554	7,198	16,520	22,266	92,467
Merced	1,935	1,238,400	1,152,990	19,555	58,769	129,575	33,446	78,477	91,880	411,702
San Benito	1,389	888,960	671,685 (2014)	12	577	6,207	4,989	18	-	11,803
Stanislaus	1,495	956,800	829,783	4,911	13,832	69,986	28,078	42,195	61,794	220,796
Tulare	4,824	3,087,360	1,298,053	15,873	80,305	163,358	34,899	124,428	113,645	532,508
Total	67,585	43,254,400	17,807,101	166,593	715,294	959,418	234,057	420,626	477,932	2,973,920

^[1] California State Association of Counties. <http://www.counties.org/pod/square-mileage-county>

^[2] Department of Conservation. Farmland Mapping and Monitoring Program. 2016.

^[3] Small Grains include barley, oats, rye, triticale, and wheat

^[4] Forage: Feed for livestock composed of plants grown for haying or grazing (US Department of Agriculture)