

US EPA ARCHIVE DOCUMENT

**Chukchansi Gold Resort & Casino
NDPES Permit No. CA 0004009**

RESPONSE TO COMMENTS DOCUMENT

Table 1. Written Comments Received On or Before May 8, 2007

	Commenter	Signed by	Comments Dated	Comments
001	Congressman George Radanovich	Congressman George Radanovich	05/01/07	12-1, 12-3, 12-4
002	California Regional Water Quality Control Board Central Valley Region	Loren J. Harlow	03/08/07	3-2, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-8, 5-10, 6-1
003	County of Madera Resource Management Agency, Environmental Health Department	Jill Yaeger	01/19/07 and 05/07/07	1-1, 3-3, 5-6, 5-8, 5-25, 5-26, 6-2, 6-3
004	Madera Irrigation District	Stoel Rives LLP, Michael A. Campos	01/22/07 and 04/09/07	1-1, 8-1, 5-12
005	Divirgilio Tarigo LLC	Robert H. Divirgilio	05/07/07	7-1, 7-2
006	California Save Our Streams Council	Lloyd Carter	01/22/07	1-1, 3-3, 3-4, 5-1, 5-9, 5-13, 5-15, 5-16
007	Jo Anne Kipps	-	01/21/07 and 04/27/07 and 05/08/07	1-1, 3-3, 3-4, 3-5, 5-1, 5-3, 5-5, 5-13, 5-14, 5-17, 5-18, 5-27, 6-3, 10-7, 10-9
008	Mary Anna McKinley	-	05/08/07	3-1, 8-5, 8-6
009	Larry & Karen Null	-	05/07/07	5-19, 11-1
010	Bruce Gray	-	05/07/07	3-4, 3-5, 3-6, 3-12, 5-11, 5-20, 5-21, 5-24, 6-4, 7-2, 8-1, 8-2, 8-3, 8-4, 8-5, 10-3, 10-6, 10-7, 10-9, 10-11, 11-2, 12-3, 12-5
011	Dale Drozen	-	04/26/07	2-4, 3-7, 3-8, 3-9, 10-8

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012	Polly Hayes	-	02/21/07	11-4
013	Ginger Julian	-	02/21/07	1-1, 2-3, 8-1, 8-3
014	Robert Novak	-	04/27/07	5-22, 11-3, 2-1
015	Alan Rodely	-	03/24/07 and 05/05/07 and 05/06/07	1-1, 2-3, 3-11, 8-3, 10-2, 10-3, 12-1, 12-4, 12-5, 13-1, 13-2
016	Austin & Judith Maynard # 353	-	02/11/07	1-1, 2-1, 4-1, 6-7
017	(Verna?) Erikson # 420	-	02/09/07	1-1, 2-1, 4-1
018	Jack Erikson # 420	-	02/06/07	1-1, 2-1, 4-1
019	Barbara Ellis # 246	-	02/06/07	1-1, 2-1, 4-1
020	(Arlene Hampton?) # 411	-	02/06/07	1-1, 2-1, 4-1
021	(Steve P. Hampton?) # 411	-	02/06/07	1-1, 2-1, 4-1
022	Myrtle Jackson #547	-	02/06/07	1-1, 2-1, 4-1
023	Robert Jackson # 547	-	02/06/07	1-1, 2-1, 4-1
024	Gene Dunkin # 516	-	02/06/07	1-1, 2-1, 4-1
025	Peggy J. Dunkin # 516	-	02/06/07	1-1, 2-1, 4-1
026	Clare Goodrich # 422	-	02/06/07	1-1, 2-1, 4-1
027	(Ree?) Whitford # 202	-	02/06/07	1-1, 2-1, 4-1
028	(Dennison?) Whitford # 202	-	02/06/07	1-1, 2-1, 2-3, 4-1
029	(Jack Clift?) # 439	-	02/06/07	1-1, 2-1, 2-3, 4-1
030	Doris Clift # 439	-	02/06/07	1-1, 2-1, 4-1
031	Roy Goodrich # 422	-	02/06/07	1-1, 2-1, 4-1
032	Barbara Martin # 240	-	02/06/07	1-1, 2-1, 4-1
033	Mary Bermke # 429	-	02/06/07	1-1, 2-1, 4-1
034	Ronald E. Jones # 117	-	02/06/07	1-1, 2-1, 4-1
035	Liuca Peacock # 249	-	02/06/07	1-1, 2-1, 4-1
036	Paul R. Peacock #249	-	02/06/07	1-1, 2-1, 4-1
037	(Frank Collander?) # 311	-	02/06/07	1-1, 2-1, 4-1
038	Harley & Phyllis Jackson # 304	-	02/06/07	1-1, 2-1, 4-1
039	(Maynard Magee?) # 123	-	02/06/07	1-1, 2-1, 4-1
040	Roderick Crane # 236	-	02/06/07	1-1, 2-1, 4-1
041	Gerda Crane # 236	-	02/06/07	1-1, 2-1, 4-1
042	Charlotte Maddox # 524	-	02/06/07	1-1, 2-1, 4-1
043	Darrell Maddox # 524	-	02/06/07	1-1, 2-1, 4-1
044	(Dennis L. Keaney) # 121	-	02/06/07	1-1, 2-1, 4-1
045	(Sandra J. Keaney) # 121	-	02/06/07	1-1, 2-1, 4-1
046	Emilio Gomez # 566	-	02/07/07	1-1, 2-1, 4-1
047	Devora J. Gomez # 566	-	02/07/07	1-1, 2-1, 4-1

048	Robert & Regina Orazem	-	02/09/07	1-1, 2-1, 4-1
049	Carol Rodely # 412	-	02/06/07 and 02/15/07 and 05/06/07	1-1, 2-3, 3-11, 8-3, 10-2, 10-3, 12-1, 12-4, 12-5
050	David Ellis	-	02/08/07	1-1, 2-1, 4-1
051	Stan Sullivan # 340	-	02/06/07	1-1, 2-1, 4-1
052	Wilma Atkins # 238	-	02/06/07	1-1, 2-1, 4-1
053	(Ed George?) # 438	-	02/06/07	1-1, 2-1, 4-1
054	(Claribell Wilbur?) # 122	-	02/06/07	1-1, 2-1, 4-1
055	Bob & Carol Cessna # 542	-	02/06/07	1-1, 2-1, 4-1
056	Mr. & Mrs. Roland Blasé # 308	-	02/06/07	1-1, 2-1, 4-1
057	Riley Garcia # 403	-	02/06/07	1-1, 2-1, 4-1
058	Bonnie-Jean Garcia # 403	-	02/06/07	1-1, 2-1, 4-1
059	James Hogate # 108	-	02/06/07	1-1, 2-1, 4-1
060	Mary L. Hogate # 108	-	02/06/07	1-1, 2-1, 4-1
061	(Virginia Lang Huber?) # 506	-	02/06/07	1-1, 2-1, 4-1
062	Jean Bowman # 336	-	02/06/07	1-1, 2-1, 4-1
063	Georgia Bielik # 313	-	02/07/07	1-1, 2-1, 4-1
064	Albert Beilik # 313	-	02/06/07	1-1, 2-1, 4-1
065	(Jane Donolo?) # 556	-	02/06/07	1-1, 2-1, 4-1
066	(Robert Donolo?) #556	-	02/06/07	1-1, 2-1, 4-1
067	Milton Anderson # 217	-	02/06/07	1-1, 2-1, 4-1
068	Janice J. Anderson # 217	-	02/06/07	1-1, 2-1, 4-1
069	Ken & Sherry Faulkner # 552	-	02/06/07	1-1, 2-1, 4-1
070	Billie Martin # 567	-	02/06/07	1-1, 2-1, 4-1
071	Tommy W. Martin # 567	-	02/06/07	1-1, 2-1, 4-1
072	(Ruth Michaelson?) # 324	-	02/06/07	1-1, 2-1, 4-1
073	Jessie Simpson # 404	-	02/06/07	1-1, 2-1, 4-1
074	James Simpson # 404	-	02/06/07	1-1, 2-1, 4-1
075	Edgar & Lurene Refsell # 448	-	02/06/07	1-1, 2-1, 4-1
076	Virginia Woodruff # 431	-	02/06/07	1-1, 2-1, 4-1
077	Donald Woodruff # 431	-	02/06/07	1-1, 2-1, 4-1
078	(Joseph P. Schnieder?) # 254	-	02/06/07	1-1, 2-1, 4-1
079	Beverly Humphrey #550	-	02/06/07	1-1, 2-1, 4-1
080	John T. Rankin # 569	-	02/06/07	1-1, 2-1, 4-1

081	Grace M. Rankin # 569	-	02/06/07	1-1, 2-1, 4-1
082	(Evelyn Wilke?) #106	-	02/06/07	1-1, 2-1, 4-1
083	Mary Turner # 451	-	02/06/07	1-1, 2-1, 4-1
084	(Sam Turner?) # 451	-	02/06/07	1-1, 2-1, 4-1
085	Diane Bartlett # 115	-	02/06/07	1-1, 2-1, 4-1
086	John Byrne # 346	-	02/06/07	1-1, 2-1, 4-1
087	Geneva Byrne # 346	-	02/06/07	1-1, 2-1, 4-1
088	Loren Epperson # 309	-	02/06/07	1-1, 2-1, 4-1
089	Alberta Epperson # 309	-	02/06/07	1-1, 2-1, 4-1
090	Elsie Fraer # 571	-	02/06/07	1-1, 2-1, 4-1
091	Carl Fraer # 571	-	02/06/07	1-1, 2-1, 4-1
092	(John Werness?) # 348	-	02/06/07	1-1, 2-1, 4-1
093	Doris A. Chandler # 558	-	02/06/07	1-1, 2-1, 4-1
094	Harold Chandler # 558	-	02/06/07	1-1, 2-1, 4-1
095	Marianne A. Seals # 549	-	02/06/07	1-1, 2-1, 4-1
096	Travis J. Seals # 549	-	02/06/07	1-1, 2-1, 4-1
097	Barbara H. & Joseph W. Wood # 343	-	02/06/07	1-1, 2-1, 4-1
098	Geraldine Waggoner # 243	-	02/06/07	1-1, 2-1, 4-1
099	Clayton Waggoner # 243	-	02/06/07	1-1, 2-1, 4-1
100	Lynn Riemer # 437	-	02/06/07	1-1, 2-1, 4-1
101	Micha Riemer # 437	-	02/06/07	1-1, 2-1, 4-1
102	Janet Burr # 117	-	02/06/07	1-1, 2-1, 4-1
103	Carolyn & Ron Kimpton # 536	-	02/06/07	1-1, 2-1, 4-1
104	Sandra & Robert Hendrick # 251	-	02/06/07	1-1, 2-1, 4-1
105	(Barbara Morris?) # 501	-	02/06/07	1-1, 2-1, 4-1
106	Janice Ryder # 350	-	02/06/07	1-1, 2-1, 4-1
107	Ken Ryder # 350	-	02/06/07	1-1, 2-1, 4-1
108	Diana White # 410	-	02/06/07	1-1, 2-1, 4-1
109	Lois Williams # 419	-	02/06/07	1-1, 2-1, 4-1
110	Doris Ward # 572	-	02/06/07	1-1, 2-1, 4-1
111	Marie Reimer # 508	-	02/06/07	1-1, 2-1, 4-1
112	(Irwin Reimer?) # 508	-	02/06/07	1-1, 2-1, 4-1
113	Leona J. Lisk # 124	-	02/06/07	1-1, 2-1, 4-1
114	Todd Bowman # 336	-	02/06/07	1-1, 2-1, 4-1
115	Lalah Smith # 310	-	02/06/07	1-1, 2-1, 4-1
116	(Laurence J. Schuerer?) # 545	-	02/06/07	1-1, 2-1, 4-1
117	Mary Lou Phillips # 220	-	02/06/07	1-1, 2-1, 4-1
118	Kenneth L. Kimpton # 536	-	02/06/07	1-1, 2-1, 4-1
119	(Virginia Odell?) # 244	-	02/06/07	1-1, 2-1, 4-1

120	(Ayeree Gibson?) # 215	-	02/06/07	1-1, 2-1, 4-1
121	(Nancy L. Lindgrene?) #211	-	02/06/07	1-1, 2-1, 4-1
122	(W Wilbur?) # 122	-	02/06/07	1-1, 2-1, 4-1
123	Brenda Henry # 435	-	02/07/07	1-1, 2-1, 4-1
124	(Unreadable) # 501	-	02/06/07	1-1, 2-1, 4-1
125	(Unreadable) # 244	-	02/06/07	1-1, 2-1, 4-1
126	(Unreadable) # 344	-	02/06/07	1-1, 2-1, 4-1
127	(Unreadable) # 402	-	02/06/07	1-1, 2-1, 4-1

Table 2. Public Hearing Testimony received on April 26, 2007 in Coarsegold, California

	Commenter	Representing	Comments *
PH 1	Alan Rodely *	Resident Park Sierra	
PH 2	Caroline Rodley *	Resident Park Sierra	
PH 2	Wayne & Maria Carpenter	Resident of Coarsegold	1-1, 2-1, 2-2, 12-4
PH 3	Michael Grey	Resident	3-13, 7-2
PH 4	Bob Odell	Resident Park Sierra	8-10
PH 5	Bill Willbur	Resident Park Sierra	12-4
PH 6	William Whitehead	Resident of Coarsegold	3-1, 3-11, 5-16, 5-19, 6-1, 6-5, 6-6, 7-2, 10-7
PH 7	Jeff Livingston	CEO and Manager of Chukchansi Gold Resort and Casino	2-11
PH 8	Alan Turner	General Manager of Madera Irrigation District	3-10, 3-11, 6-5, 8-1, 8-5, 11-5
PH 9	Seth Stairs	Resident of Yosemite Lake Park	3-11, 3-12, 8-1, 8-3
PH 12	Joe Astier	Resident Yosemite Lake Park	2-3, 3-1, 6-6, 7-2, 12-5
PH 13	Barbara Whitehead	Resident of Coarsegold	2-3, 8-1, 9-1, 12-1, 12-3, 12-4
PH 15	Cathy Cory	Member of the Chukchansi Tribe	2-5, 5-23, 8-3
PH 16	Diane Boland	Resident of Indian Lake/Coarsegold	11-1, 12-7
PH 17	Dale Drozen *	Resident of Coarsegold	
PH 18	Mary Anne McKinley	Resident of Coarsegold	2-3, 5-28, 8-1, 8-3, 8-5, 9-1, 11-1, 11-2, 11-3, 11-4, 11-5

PH 19	Bruce Gray *	Resident	
PH 20	Lloyd Carter *	California Save Our Streams Council	
PH 21	JoAnne Kipps *	Resident of Fresno County	
PH 22	Larry Ballew	Resident of Ahwahnee/Madera County	2-8, 2-9, 2-10
PH 23	William Fielibo	Resident of Coarsegold/ Tehipite Chapter of the Sierra Club	2-1, 8-1, 8-5, 8-7, 8-10, 10-4, 12-2
PH 24	Sheryl Gray	Resident of Madera County	
PH 25	Janet Fielibo	Resident of Coarsegold	1-1, 2-1,
PH 26	Don Wilmoth	Not stated	6-7
PH 27	Kenneth Kimpton	Downstream Resident	8-1, 10-4,
PH 28	Joe Clark	Resident of Coarsegold	4-1, 10-3
PH 29	Danny Whitford	Resident of Park Sierra	2-1,
PH 30	Ginger Julian *	Resident of Park Sierra	

* Commenters denoted with a “*” have also provided written comments. All oral comments are referenced in the written comments and are not repeated here. Any comments expressed in testimony but not expressed in the written comments are specifically identified here.

General Categories of Comments and Comment Response

1. PUBLIC COMMENTS/HEARING
2. GENERAL COMMENTS AND OPPOSITION/SUPPORT OF PERMIT
3. EIRs, ANTI-DEGRADATION, AND OTHER STUDIES
4. PUBLIC NOTIFICATION ISSUES.
5. ADEQUACY OF TREATMENT, LIMITS, AND MONITORING
6. GROUND WATER IMPACTS
7. PRIVATE PROPERTY ISSUES
8. INSUFFICIENT DATA ISSUES
9. CASINO EXPANSION CONCERNS.
10. PLANT OPERATIONS AND NOTIFICATION OF UPSET/NON-COMPLIANCE
11. ENFORCEMENT ISSUES
12. ALTERNATIVE USES OF TERTIARY TREATED EFFLUENT
13. PROCEDURAL QUESTIONS

COMMENT RESONSES

Comments in BOLD

Responses in plain text

1 – PUBLIC COMMENTS/HEARING

1-1 Request EPA to hold a public hearing and/or request extension to comment period. Request that more “follow up” meetings be scheduled to answer the questions from the first public hearing.

RESPONSE: The United States Environmental Protection Agency (hereinafter “EPA”) initially public noticed the proposed draft Permit for the Chukchansi Wastewater treatment plant (hereinafter “Chukchansi WWTP” or “the WWTP”) on December 22, 2006 in the *Fresno Bee*. Due to the significant public interest in the process, EPA then re-noticed the draft rule and public hearing on March 23, 2007 in the *Sierra Star*. EPA held a public hearing on April 26, 2007 in Coarsegold, CA and extended the comment period until May 8, 2007, allowing over 180 days for public comment. Where applicable, EPA has incorporated changes to the final permit to address public comments and concerns, or has provided a response to comments in this document. Accordingly, EPA does not believe that additional time for review and comment or an additional public hearing are warranted.

2 – GENERAL COMMENTS AND OPPOSITION/SUPPORT OF PERMIT

2-1 Oppose EPA issuing a NPDES permit to the Tribe.

RESPONSE: Comments noted.

2-2 –EPA must be fair to the community and require the Tribe to follow the same requirements that would be imposed for any other organization.

RESPONSE: The permit issued to the Picayune Rancheria of the Chukchansi Indians (hereinafter “the Tribe”, or “the Permittee”, or “the Discharger”) for the Chukchansi WWTP, as is the case for all other facilities that receive a National Pollutant Discharge Elimination System (hereinafter “NPDES”) permit, meets all requirements of the Clean Water Act (hereinafter “CWA”). As described in the Fact Sheet, EPA has established effluent limitations and monitoring requirements as specified in the CWA to protect all beneficial uses of the receiving waters, which include meeting effluent limits at the point of discharge, without an allowance for dilution, to protect Agricultural Supply (AGR), Municipal Supply (MUN), Ground Water Recharge (GWR) Water Contact Recreation (REC-1), Other Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD), in the Water Quality Control Plan for the Central Valley Region (here in after “Basin Plan” or “RB5 Basin Plan”)

2-3 - The EPA must prevent the discharge into Coarsegold creek by prohibiting it at all times.

RESPONSE: The CWA under the NPDES permitting provisions does not authorize the EPA to prohibit all discharge into a surface water unless there are specific prohibitions on discharges to a particular surface water that have been adopted by either the Federal or State authority for that particular water. In the case of Coarsegold creek and its downstream waters, there are no such prohibitions in either the Federal or State law. Thus pursuant to the CWA, the EPA or other delegated permitting authority, cannot prohibit discharge to surface waters. Rather, as required by Section 402 of the CWA the regulatory agency is required to establish limitations and monitoring requirements to protect beneficial uses of the receiving waters from permitted point source discharges.

2-4 - Support EPA issuing a NPDES permit to the Tribe. The Tribe are installing a treatment plant that is superior to any facility currently operating in the area.

RESPONSE: Comment noted. As noted above in response 2-2 and 2-3, EPA believes that the conditions in the permit will protect all beneficial uses of the receiving waters as per the CWA.

2-5 - I am extremely concerned about the impact of releasing effluent in Coarsegold creek and ultimately the Fresno and San Joaquin rivers. Native Americans in particular have a sacred duty to honor and protect the natural environment, which is our earth mother. Protecting the environment is part of a greater obligation to honor one's past, strengthen one's present and work towards a better and brighter future not only for our children, but for all children. A tribal government that has shown a willingness to destroy its own culture, its own heritage and its own people as has the tribal government of Picayune through arbitrary and capricious disenrollment of its own people cannot and should not be entrusted with the preservation of our precious water resources. I object to this permit on these grounds.

RESPONSE: Comments noted.

2-6 - I want to say as a general principle Save Our Streams opposes dumping treated sewage into pristine mountain creeks. We believe that the creeks of the Sierra here are one of the keys to the tourism industry and want to keep them as clean as possible

RESPONSE: Comments noted. EPA is committed to keeping the receiving waters as clean as possible, and the permit for the proposed treatment plant requires the Permittee to treat the discharge to a very high standard beyond the normal secondary treatment requirements for publicly owned treatment facilities. In situations where facilities are discharging into Tribal waters, and the Indian Nation does not have EPA-approved water quality standards, as is the case here, it has been EPA's practice to apply adjacent or downstream standards to the water body for the purpose of developing permit limitations and conditions. The federal regulation 40 Code of Federal Regulations (CFR) Section 122.4(d) gives EPA the authority to protect the waters of all affected States. Moreover, where there are no approved Tribal water quality standards, EPA has the authority to

impose conditions it determines are necessary to meet the requirements of Section 402(a)(1)(B) of the CWA. EPA, using its best professional judgment (hereinafter “BPJ”), applied either Federal water quality standards found in the California Toxics Rule in the Code of Federal Regulations (CFR) at 40 CFR Section 131.38 Section or the water quality standards found in the Basin Plan, whichever was more protective of the beneficial uses. Based on BPJ, EPA has also included effluent limitations that require the Permittee to be consistent with the State of California Title 22 standards for the treatment of wastewater, for recycling and re-use within the State. The permit is designed to protect all designated beneficial uses of the receiving waters which includes contact recreation (REC-1) and non-contact recreation (REC-2).

2-7 - I want to say, I think by and large you have some very good language in the permit. However, as we all know if we read the newspapers, human beings fail and make mistakes and every week in the paper you’ll read where a wastewater treatment plant has broken down despite the best efforts of their engineers and untreated sewage gets into the public water system and causes problems. No permit no matter how well written can account for such mistakes. So I would like EPA to consider not issuing this permit.

RESPONSE: Comments noted. Also see response to 2-2, 2-3 and 2-6 above.

2-8 – I would like to introduce a document, The Fresno River Nutrient Reduction Plan, final report prepared by the County of Madera, California, Engineering Department in 2004, into the official record. This document was funded in part by a grant by the EPA administered through the State Water Resource Control Board.

RESPONSE: EPA thanks the commenter for providing it with this document. EPA has obtained the document, reviewed it, and considered it in developing this permit, and placed the document in the Administrative Record for this permitting action.

2-9 – If you read the Fresno River Nutrient Reduction Plan you will find that Coarsegold creek was very well studied as to its pollution over the entire area. When you compare this report of Coarsegold creek, which had five points of testing, you will find that the creek, prior to the tribe building their facility, far exceeded the standards for safety and well-being of the people of this area, as does the Fresno River. If you read this report on the previously present coliform, E. coli, etc., levels it will scare you, and should require that you put something in your notification to tell everybody they are moving into an area that does not meet health standards for any water course within the area.

RESPONSE: Comments noted. EPA has reviewed pertinent information in the Fresno River Nutrient Reduction Plan and has taken such information into consideration in drafting the permit for final issuance. One of the beneficial uses of the receiving water protected by the limits established in the permit is the use of the receiving water as a source or potential source of Municipal water supply (MUN), and accordingly stringent limits on bacterial contamination are imposed in the permit on the Discharger.

2-10 - I am concerned about the pollution in the Fresno River, but I see a light at the end of the tunnel, and I have fought the Oakhurst Water Sewage System, which

didn't do anything for the area, but I have seen what the tribe have done. I went through the tribe's plant and their facility is state of the art. They also have one of the finest programs I have ever encountered for conserving and utilizing the treated wastewater.

RESPONSE: Comments noted.

2-11 - The Tribe will make sure it maintains the standards set forth in the NPDES permit and to serve the community by providing the best system that it possibly can.

RESPONSE: Comments noted.

3 - EIR, ANTI-DEGRADATION, AND OTHER STUDIES

3-1 - EPA should prepare an Environmental Impact Report (EIR) for the proposed permit. An EIR is necessary for EPA to go forward with issuing a permit for the proposed new treatment plant.

RESPONSE: Environmental Impact Reports (EIRs) are generally required under actions subject to the California Environmental Quality Act (CEQA). This action is a federal action permitting a discharge of treated wastewater on Tribal land, and therefore is not subject to CEQA. The federal counterpart of an EIR under CEQA is an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). EPA has not prepared an EIS for this NPDES permit because the CWA and its implementing regulations do not require NEPA analysis for the issuance of an NPDES permit in this case. Section 511(c) of the CWA provides that NEPA generally is not triggered by EPA actions taken under the authority of the CWA. There are two exceptions to this rule, neither of which apply here. The first exception is for federal financial assistance for publicly owned treatment works. The second exception is for discharges of pollution by "new sources" within the meaning of CWA Section 306. A new source is defined as a facility which commenced construction after the promulgation of the standards of performance under Section 306 of the CWA which are applicable to such source. 40 CFR Section 122.2. EPA has not financially assisted the construction of this facility, nor has it promulgated Section 306 standards of performance for publicly owned wastewater treatment plants. Therefore, NEPA analysis is not required in this case.

3-2 – The permit should require the Discharger to perform studies to determine if the effluent limits for substances such as nitrogen and phosphorus are adequate to protect the beneficial uses of Coarsegold Creek, the Fresno River and Hidden Reservoir.

RESPONSE: In developing the limits and conditions of the this permit, EPA reviewed available information about the ambient receiving water quality both at the point of discharge and downstream. Such information was considered in developing effluent limits or other requirements included in the permit. Further detailed information on characterizing ambient receiving water quality in the Fresno River including at Hidden Lake is available in the Fresno River Nutrient Reduction Plan Final Report, which is part of the administrative record of this permitting action. Additionally it should be noted that

the effluent limits or other requirements included in the permit are designed to protect all the designated beneficial uses of Coarsegold Creek, the Fresno River and Hidden Reservoir or Hensley Lake, as enumerated in the Basin Plan. As described in the Fact Sheet, EPA has established effluent limitations and monitoring requirements in the permit that will protect all beneficial uses of the receiving waters, which include meeting effluent limits without an allowance for dilution to protect Agriculture Supply, Groundwater Recharge, Water Contact and Non-contact Recreation, Municipal Supply, Warm Freshwater Habitat, Cold Freshwater Habitat, and Wildlife Habitat as specified in the Basin Plan.

3-3 – The permit should describe how the discharges permitted comply with both federal and State anti-degradation policies

RESPONSE: As described in the Fact Sheet, wastewater effluent will be treated to tertiary treatment levels that will meet all applicable water quality standards at the end of pipe without allowance for dilution in the receiving water. A priority pollutant scan has been conducted of the effluent, demonstrating that most pollutants are currently in amounts below detection levels. Only Copper and Zinc, among regulated parameters were detected in the wastewater, and the permit has been amended to include limits for Copper and Zinc, as a reasonable potential analysis showed that there could be reasonable potential for exceedence of limits for these two substances. Besides these two metals, no toxic pollutants were present in the effluent and because of the low levels of toxic pollutants present in the effluent, it is not expected that the discharge will adversely affect receiving water bodies.

The flow of the Fresno River, the ultimate downstream water into which the unnamed wash into which the discharge will be released, varies from less than 10 cubic feet per second (Hereinafter “cfs”) to over 80 cfs depending on the time of year, according to the Fresno River Nutrient Reduction Plan. The maximum average design flow for the Casino wastewater treatment plant is about 0.1 cfs. Currently the Casino wastewater treatment plant discharges no effluent into the receiving water. If the maximum average design flow of the new treatment plant were all to be released into the receiving water (a very unlikely scenario, since the treated effluent is required for re-use in facility and for irrigation during the dry time of the year) it would still not be more than about 1% of the total flow of the Fresno river. During wet times of the year such a flow would be less than 0.01% of the flow of the Fresno River.

Additionally, EPA reviewed the literature to evaluate the potential effects of the discharge on species listed as threatened or endangered and also reviewed the literature for potential effects to designated critical habitat for such species. Based on this review, EPA concluded that the discharge will have no effect on any listed threatened or endangered species or critical habitat. Due to the very high level of treatment achieved, the absence of toxic pollutants, the low volumes of wastewater likely to be discharged during critical periods, EPA has concluded there will be no degradation of water quality.

3-4 – The permit should characterize ambient receiving water quality, including Fresno River at Hidden Lake.

RESPONSE: EPA reviewed available information about the ambient receiving water quality both at the point of discharge and downstream. Such information was used,

where appropriate, in developing effluent limits or other requirements included in the permit. Further detailed information characterizing ambient receiving water quality in the Fresno River including at Hidden Lake is available in the Fresno River Nutrient Reduction Plan Final Report, which is part of the administrative record of this permitting action.

3-5 - The permit should characterize ambient receiving water quality in the immediate vicinity of the discharge site.

RESPONSE: EPA reviewed available information about the ambient receiving water quality in the immediate vicinity of the discharge site. Such information was considered in developing effluent limits or other requirements included in the permit. Further detailed information on characterizing ambient receiving water quality in the immediate vicinity of the discharge site on tribal land and immediately beyond is available in the following documents which are part of the administrative record of this permitting action:

- 1) Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino. February 2001.
- 2) Final On-Reservation Environmental Evaluation for the Chukchansi Gold Resort and Casino Expansion. June 2006.
- 3) Fresno River Nutrient Reduction Plan Final Report. December 2004.

3-6 - Which agencies were contacted by EPA to try and determine water quality and quantity in the existing creek, prior to discharge from the Casino?

RESPONSE: The list of federal, state and local agencies contacted by EPA in the course of developing the permit includes the following: the California Regional Water Quality Control Board Central Valley Region, the United States Fish and Wildlife Service, the California Department of Fish and Game, the United States Army Corp of Engineers, the County of Madera, Resource Management Agency and Engineering Department.

3-7 - I live downstream from the Casino not far from Coarsegold creek. I took some time to sort out what I feel is reality and what is sensationalism. Reality is that Coarsegold creek is far from pristine. Every wet winter raw untreated sewage from hundreds of septic tanks flows into local streams, including Coarsegold creek.

RESPONSE: Comments noted.

3-8 - Madera County operates a treatment plant next to the river in Oakhurst, and it often fails in wet weather. Mariposa and Yosemite National Park have treatment plants that discharge into area rivers and streams. The Tribe is installing a treatment plant that is superior to any facility currently operating in the area, and any water released will be cleaner than the stream water that it is released into.

RESPONSE: Comments noted.

3-9 - The current Chukchansi facility, unlike any other wastewater treatment facility in the area recycles all of the wastewater it produces. In the future, with the new facility in place the Tribe will continue to recycle a significant percentage of the treated effluent generated.

RESPONSE: Comments noted. The permit provides that the Tribe will recycle and re-use treated effluent to the maximum extent practical. As noted by the commenter, the Tribe currently recycles or disposes via spray fields or leach fields all of the treated effluent it generates, on average 104,000 gallons per day, and would at the very least, be able to continue to recycle and dispose via spray fields or leach fields at least that much treated effluent. The Tribe is currently “authorized by rule” by the EPA for the subsurface discharge of wastewater from their existing treatment facility. This authorization is related to the fact that the Tribe has met the criteria specified by EPA’s Underground Injection Control (UIC) Program pursuant to 40 CFR 144.24 of the Drinking Water Regulations. The Tribe has indicated that it intends to maintain such independent authorization which is not a part of the NPDES permit, even after it obtains an NPDES permit.

3-10 - No analysis on stream life has been performed. The downstream user impacts have issues that are unresolved. Madera Irrigation District (MID) has no authority or approval to use treated wastewater as part of its irrigation system. The waters that leave tribal land end up in Hensley Lake, one of the major sources of the supply for the MID and, it provides water to farmers who use it for irrigation.

RESPONSE: The permit contains effluent limitations and other provisions to ensure the protection of all designated beneficial uses of downstream waters, including the use of the water for Agricultural Supply.

3-11 - Coarsegold creek drains into the Fresno River which flows into Hensley Lake which is the primary water source for the City of Madera. Will there be a requirement in the permit to notify the City that treated wastewater will be flowing into its water supply?

RESPONSE: The Fresno River currently receives, either directly via point source discharge, or indirectly via non-point surface or sub-surface discharge, treated and untreated wastewater from various sources. The sources include the City of Oakhurst wastewater treatment facility, which has a design capacity of over half a million gallons per day, as well as much smaller, but more numerous non-point sources of surface run off from private property as well as sub-surface non-point source run-off of untreated wastewater from septic systems located on such properties. None of these other sources are required to notify the City of Madera, and the CWA does not require individual notification in an NPDES permit.

Nevertheless, since EPA issued a public notice on the proposed permit on December 22, 2006, and then issued a subsequent public notice to re-open the comment period and held a public hearing in Coarsegold on April 26, 2007, the City of Madera has received both constructive and actual notice that EPA was intending to authorize discharge of treated wastewater into an unnamed stream that is a tributary of Coarsegold creek, which itself is a tributary of the Fresno River and Hensley Lake.

3-12 - What is the baseline of the waters that the Casino is discharging into? I heard conflicting reports that it is a dry wash, or a flowing stream. Has there been a baseline study done on the condition of Coarsegold creek prior to the release of the wastewater? Has it been discussed that Coarsegold creek is now a seasonally dry

creek with no flow in the summer months? How will this seasonal flow impact the potential for pollutants to reach Black Hawk Lake, Hensley Lake and the Fresno River?

RESPONSE: EPA reviewed and considered available information about the baseline conditions, including seasonal variations, of the waters that the Casino is discharging into, which can be found in various documents that are part of the administrative record of this permitting action, in developing the limits it has imposed on the Casino wastewater treatment plant in this permit. Please see response to 3-4 and 3-5 above.

3-13 - Downstream of Coarsegold creek there are small cattle ranches where livestock feed alongside and drink waters of the creek. Has the potential impact of unwanted chemicals finding their way into the human food chain been considered?

RESPONSE: Yes. One of the beneficial uses of the receiving waters which the effluent limits imposed on the Permittee are designed to protect is Agricultural Supply use (AGR). This beneficial use protects the use of the water for farming, horticulture, or ranching, including, but not limited to, irrigation (including leaching of salts), stock watering, or support of vegetation for range grazing. Thus the potential impact of pollutants in the water finding their way into the human food chain via consumption of livestock that use the water or that consume vegetation that uses the water has been considered.

4 - PUBLIC NOTIFICATION ISSUES

4-1 - Concerns that the public and local landowners were not adequately notified of proposal. Neither EPA nor the Tribe conferred with affected property owners on possible impacts of the discharges through and on their property

RESPONSE: Consistent with the public participation requirement of the CWA and implementing regulations, the proposed permit was noticed in area and local newspapers on two separate occasions, once on December 22, 2006 in the *Fresno Bee* and subsequently on March 23, 2007 in the *Sierra Star*. In addition, EPA directly notified all known interested parties by email and/or direct mailing of the notice. The public hearing was also noticed in the local newspaper, the *Sierra Star* on March 23, 2007 and the public comment period was re-opened and extended by another 45 days, bringing the total time for public comment on the draft permit to over 180 days. Several articles were published in the local paper regarding the permit as well. EPA has thus met all obligations of notification for proposed permits as required by the Clean Water Act, and EPA has made a concerted effort to notify interested parties of the process.

4-2 - Request that local landowners be involved in permit decisions and that downstream land owners be personally notified immediately of any plant failure or Non-compliance.

RESPONSE: EPA notified affected parties, or potentially affected parties of the permit application and the draft permit, as well as the public hearing through public notices in local newspapers and via email to individuals known to EPA to be interested in the permit decision.

As regards to involvement in the permit decisions see response to 4-1 above. The CWA and its implementing regulations do not authorize EPA to require that a permittee provide personal notification of downstream land owners of any plant failure or Non-compliance. The permit however does mandate that the Permittee report any non-compliance which may endanger human health or the environment, both to EPA and to the Madera County Resource Management Agency within 24 hours from when the Permittee becomes aware of the circumstances of such non-compliance. Additionally, all monitoring reports, including all reports of laboratory testing done on the treated effluent, as well as any reports of non-compliance or permit violations are public records that can be obtained from the EPA at any time. Significant penalties including fines of up to \$20,000 per violation per day or imprisonment of up to four years, or both apply to any person who knowingly makes any false statement, or certification in any record or other document submitted or required to be maintained pursuant to the permit. The permit may also be terminated for cause. These reporting requirements should provide any local landowners assurance that any plant failure or non-compliance will be addressed immediately by the regulatory authorities.

***4-3 - EPA has not made available materials and documents that were cited in the fact sheet.**

RESPONSE: EPA disagrees. All materials cited in the Fact Sheet were made available to the public throughout the comment period and copies of such materials could have been obtained through a request made to EPA. Contact information for EPA (email, phone number, and mailing address) was provided in the public notices. Details for reviewing the public record were also provided in the public notice. EPA held a public workshop and public hearing in the town of Coarsegold to explain the details of the permit and to answer questions about the permit from the public.

5 –ADEQUACY OF TREATMENT, LIMITS, AND MONITORING

5-1 - In the case of the proposed discharges to Coarsegold Creek, implementation of the effluent limits consistent with “California Title 22, tertiary 2.2” recycled water criteria are appropriate given the downstream designated beneficial uses of MUN and REC-1 (Water Contact Recreation)

RESPONSE: EPA Agrees. The treatment technology used by the Tribe, i.e. the Immersed Membrane Bioreactor system, can under normal operating conditions produce effluent that is consistent with “California Title 22, tertiary 2.2” recycled water criteria. Accordingly, it is EPA’s best professional judgment (BPJ) that the Permittee can meet California Title 22, tertiary standards, and therefore EPA has included appropriate limits in the permit consistent with that goal.

5-2 - The fecal coliform limits prescribed in the permit are not consistent with total coliform criteria of Title 22. Fecal coliform is a subset of total coliform. It is quite plausible that effluent discharged to Coarsegold Creek could meet fecal coliform limits prescribed in the permit and exceed the Title 22 total coliform criteria.

Effluent limits should be expressed as total coliform to be consistent with Title 22 and to protect beneficial uses of the receiving waters.

RESPONSE: EPA agrees with the commenter and has changed the permit to express the effluent limit as a total coliform and not fecal coliform limit of 2.2 MPN/100mL for both weekly average and daily maximums, and is therefore consistent with the Title 22 total coliform criteria.

5-3 - To ensure that recycled treated effluent meets the Title 22 disinfection requirements, Title 22 included turbidity requirements. The Basin Plan includes numerical water quality objectives for turbidity. EPA should consider including effluent turbidity limits consistent with those included in Title 22. The permit states that the water is to be treated to Title 22 levels for recycling and yet there is no requirement for continuous turbidity monitoring. It is necessary to insure that the UV system is going to be working properly.

RESPONSE: EPA agrees with the commenter that turbidity should be monitored, and has included turbidity requirements as both a monthly average and a daily maximum.

5-4 - Because of skew associated with coliform data distributions, the 2.2 MPN/100ml coliform limit should be expressed as a geometric mean or a seven-day (assuming daily sampling) median rather than an arithmetic average.

RESPONSE: EPA agrees with the commenter and has clarified in the fact sheet that the limit is expressed as a seven day median rather than an arithmetic average.

5-5 - The Draft indicates that the discharge will be treated to tertiary levels. However, the effluent limitations in the draft reflect BOD and TSS levels for secondary treatment. The Permit should include the following Monthly, Weekly and Daily Maximum for BOD and TSS: 10, 15 and 20 mg/L. Removal efficiencies and mass limits should be adjusted accordingly.

RESPONSE: EPA agrees with the commenter and based on BPJ, EPA has modified the permit to be consistent with California Title 22 requirements for BOD and TSS and has revised both the concentration levels and the mass limits accordingly in the permit.

5-6 - The permit should make it clear that the limits prescribed for narrative effluent limits apply to the discharge and not just the receiving water.

RESPONSE: The statement in the permit says clearly at Part I. A.3. that the narrative water quality limits apply to the discharge. This indicates that these narrative limits in the permit apply at the end of pipe. However certain narrative limits are for ambient conditions and such limits are applicable to the receiving waters as well.

5-7 – The effluent Dissolved Oxygen (DO) limit should be modified to ensure that it is protective as per the Basin Plan water quality objective for DO.

RESPONSE: EPA agrees with the commenter and has changed the limit in the permit to ensure that it is protective as per the Basin Plan water quality objectives for inland surface waters found on page III-5.00 of the Basin Plan for protection of waters designated as COLD, which is one of the designated uses of the receiving water for this permit.

5-8 - Chlorine: It appears that the Permittee will utilize chlorine for disinfection and for treatment of recycled water for re-use in the Casino. However, the permit does not contain effluent limits for chlorine residual. Chlorine can be highly toxic to aquatic organisms even at very low levels. We request that appropriate chlorine residual effluent limits be included in the permit.

RESPONSE: As stated in the Fact Sheet, the Permittee will utilize ultraviolet (UV) disinfection, not chlorine disinfection, to treat wastewater for surface discharge. Chlorine disinfection will only be used as an emergency back-up, when disinfecting wastewater for surface discharge using UV is not possible. Thus in normal operations, chlorine is not likely to be present in the wastewater discharged to surface waters.

The Permittee however does routinely use chlorine to disinfect wastewater that is reused and recycled at the facility, including in restrooms and for landscape irrigation. Due to the use of chlorine at the facility to disinfect reused and recycled wastewater there may be some potential for a very small amount of residual chlorine to be found in the wastewater to be discharged to surface water. Therefore, EPA has revised the permit to include total residual chlorine limits in the surface water discharge, to be monitored once per week.

5-9 - The permit should require monitoring frequency for the chlorine residual to be at least daily, instead of weekly.

RESPONSE: As stated in the Fact Sheet, the permittee will utilize UV disinfection, not chlorine disinfection, except as a back-up, when disinfecting wastewater that is discharged to surface waters. Chlorine is however routinely used to disinfect wastewater that is recycled and reused in the Casino restrooms, for landscape irrigation, etc. Thus any chlorine found in the surface water discharge would likely be trace residual chlorine from the chlorinated recycled and reused water.

A priority pollutant scan done prior to the issuance of this permit did not find any chlorine in detectable quantities. EPA believes that when no chlorine is used to directly disinfect the wastewater, weekly monitoring of the discharge is sufficient. However, when chlorine is directly used (as a back-up, i.e. when UV disinfection is not possible) to disinfect wastewater for discharge to surface waters, the permit requires daily monitoring for total residual chlorine.

5-10 - EPA's own documents describe some of the pitfalls of UV treatment. One problem is that UV treatment may be affected by iron in the water. We all know that there is iron in the water up here. Has this issue been addressed?

RESPONSE: EPA agrees that iron content could be one factor that may impair efficient disinfection using UV treatment. This may occur due to iron buildup on the surface of the UV lamps. The permit requires the Permittee to meet stringent limits on bacterial levels in the effluent discharged. Exceedence of the permit limits on bacterial discharges, for whatever reason, including the lowering of the efficiency of UV treatment due to interference from iron build up on the UV lamps, must be reported to EPA pursuant to the monitoring and reporting requirements in the permit. Any violation of the bacteria standard in the discharge is subject to stringent civil and possibly criminal penalties as discussed in greater detail in Section 11 below. EPA believes these

enforcement provisions provide sufficient incentive to ensure iron levels will be appropriately monitored by the Permittee.

5-11 – The permit should contain appropriate effluent limits and/or monitoring requirements for ammonia as the receiving water is habitat for fish and other aquatic life.

RESPONSE: EPA agrees with the commenter and has included both acute and chronic limits for ammonia that are pH and temperature dependent. A table providing the applicable acute and chronic ammonia limit at any particular pH and temperature is attached as Appendix B. and Appendix C. to the permit.

5-12 - Overall, we believe that this is a well drafted permit that includes many requirements necessary to protect water quality and public health. The permit requires that wastewater be treated to an advanced level and it contains effluent limits for pollutants of concern. We support these requirements and, if properly implemented, we believe they should ensure a high level of wastewater treatment.

RESPONSE: Comment noted.

5-13 - The permit should adequately protect potential drinking water supplies downstream by including appropriate limits for the MUN (Municipal Use)

RESPONSE: The permit includes appropriate limits for the MUN beneficial use, when that particular limit for a particular pollutant would be the most stringent limit based on all the other beneficial uses also being protected. Moreover, if another existing beneficial use would require more stringent limits than the limits for MUN use, the permit requires those more stringent limits to be met.

5-14 -- The permit should address the issue of Trihalomethanes (THMs) in the discharge. The Casino recycles a significant portion of its treated Wastewater and chlorinates it for use in toilets and urinals. This recycling could have an impact on the levels of Trihalomethanes found in the effluent that is discharged. The permit should include a Reasonable Potential analysis for THMs to cause exceedences in the receiving water of the California Toxics Rule (CTR) criteria for individual trihalomethane constituents.

RESPONSE: As described in the Fact Sheet, the Tribe does not have an existing NPDES permit and therefore has not discharged to surface water. However, since the Tribe is currently operating a fully functional wastewater treatment system but then recycling, reusing, or disposing via spray and leach fields all effluent generated, EPA required the Tribe to conduct a priority pollutant analysis, performed by a California certified laboratory, on wastewater generated by its current treatment facility. The results of the priority scan performed by BSK Analytical Laboratories (Attached herewith in Appendix A.) indicated that all priority pollutants, including THM constituents, are below applicable water quality standards.

5-15 – The permit should not be issued until the discharge is characterized for “Priority Pollutants” and a Reasonable Potential analysis is performed for THMs.

RESPONSE: See response to 5-14 above.

5-16 – Algal blooms at Hensley Lake behind Hidden Dam on the Fresno River are a serious problem. The permit should address the potential to exacerbate the problem by additional nitrogen and phosphorous loading from the discharge by the Casino.

RESPONSE: Excess nutrient loadings, leading to algal blooms, are a problem in many water bodies, or water body segments, in California. When a water body or water body segment is significantly impaired for any pollutant, it is included on the State's 303(d) list of impaired water bodies. The Fresno River from source to Hidden Reservoir is not on the 303(d) list as impaired for nutrients. However, nutrient loadings to the Fresno River, and its impacts on Algal blooms at Hensley Lake are a known problem. The Fresno River Nutrient Reduction Plan Report is one of the most comprehensive attempts to identify nutrient sources, model nutrient loading, and develop an implementation plan to reduce nutrient loading and algal problems in Hensley Lake. This study concluded that nutrient concentrations in the watershed do not increase with proximity to Hensley Lake and that the nutrient concentrations at the lowest sampling site in the watershed were always lower than the Lake site closest to the Fresno River inflow. This finding suggested that the Fresno River water actually diluted nutrient concentrations in Hensley Lake. Additionally, the Report concluded that phosphorous, rather than nitrogen, might be the limiting nutrient for algae growth in Hensley Lake. This would indicate that controlling nitrogen would not have much impact, but controlling phosphorous could be beneficial. However the Basin Plan of the Central Valley Regional Water Quality Control Board does not have any effluent limitation for phosphorous for receiving waters. EPA has used its best professional judgment to require the Permittee to monitor phosphorous levels, but has not established a permit limit for phosphorous at this time. If the monitoring data suggests that phosphorous could be problem with regard to downstream nutrient loadings, EPA may re-open the permit and require phosphorous limits in the permit in the future.

5-17 - The permit must clarify whether the effluent, even if treated, poses any danger to humans who drink from, or swim in, the Fresno River downstream of the discharge point.

RESPONSE: EPA believes that the effluent limits on various pollutants established in the permit ensure that the treated discharge will be fully protective of the beneficial uses that are to be protected in the receiving waters. Among the designated beneficial uses to be protected are the use of the downstream waters as Municipal Water supply (MUN) and for Contact Recreation (REC-1) among others. The limits on individual pollutants in the permit are set to be protective of uses such as using the water for a source of municipal drinking water or to swim in, or recreate on. Therefore the permit is designed to protect these uses, not just at the location of the point source discharge, but downstream of the discharge point.

5-18 – The permit should establish an effluent limit for salinity of not to exceed 500uS/cm electrical conductivity (EC) over source water.

RESPONSE: There are no specific numeric Federal or State salinity limits that apply to the receiving water for this permitted discharge. However studies have been done by the United Nations (U.N.), and the U.N. has recommended a goal of 700uS/cm to protect the beneficial uses of water for agriculture uses. The California Department of Health Services has recommended an SMCL for EC of 900uS/cm, with an upper level of 1600uS/cm and a short term level of 2200uS/cm.

Due to lack of discharge data, it is unknown at this time what the salinity profile of the discharge from the new wastewater treatment plant will be. Therefore, using its BPJ, EPA has decided to require monthly monitoring for EC and TDS in the permit to assess the profile of the effluent and to consider whether further salinity control should be required.

5-19 – The permit should include requirements for receiving water monitoring, not just effluent monitoring.

RESPONSE: EPA agrees with the commenter and has modified its monitoring requirements in the permit. Specifically, the permit requires monitoring not just of the effluent at the point of discharge but also requires monitoring of the receiving water at the farthest practicable monitoring point on Tribal land. Monitoring at the tribal boundary is also required within 24 hours of any reported non-compliance event.

5- 20 – High levels of nitrates, detergents, cleaners, oils, etc., are discharged in sewage from a casino operation. Unless the discharge is free not only of all coliforms but free of all other chemicals that are not in pure drinking water, no discharge should be allowed.

RESPONSE: Under the Clean Water Act, point source discharges are required to obtain NPDES permits to discharge into surface waters. As described in the Fact Sheet, EPA has established effluent limitations and monitoring requirements as specified in the Clean Water Act to protect all beneficial uses of the receiving waters, which include meeting effluent limits without an allowance for dilution to protect Agriculture Supply, Groundwater Recharge, Water Contact Recreation, Municipal Supply, Warm Freshwater Habitat, Cold Freshwater Habitat, and Wildlife Habitat as specified in the Water Quality Control Plan for the Central Valley Region (“Basin Plan”). There is no requirement under the Clean Water Act that the discharge to surface waters meet the drinking water standards. In fact in some instances the limits on particular pollutants allowed in drinking water may actually be less stringent than those allowed in treated wastewater, as that particular pollutant may be particularly toxic to aquatic life, but not to humans. Thus in some instances, and for some pollutants, treating wastewater to a drinking water standard may not be the most protective standard.

5-21 – A limit on the total amount of effluent permitted to be discharged must be included in the permit.

RESPONSE: EPA agrees and the permit has mass limitations that are based on a maximum design flow of 350,000 gallons per day, which is a limit on the total amount of effluent that can be discharged by the Permittee while complying with the permit. Additionally the permit provides that the permittee will minimize the discharge of

advanced treated wastewater to surface waters at all times by maximizing recycling and reuse of the treated wastewater.

5-22 - The permit should require that a specific percentage or amount of treated effluent be recycled.

RESPONSE: Pursuant to the CWA, EPA may not require that the discharger recycle treated effluent or recycle a specific percentage of the treated effluent, absent a seasonal prohibition or restriction on discharge found in an applicable Federal or State regulations. However, consistent with the Permittee's operations plan, EPA has included a condition in the permit that provides that the Permittee minimize the discharge of advanced treated wastewater to surface waters at all times by maximizing recycling and reuse of the treated wastewater. See Table 1. foot note (1), in the permit.

5-23 – The permit should require end of pipe water temperature to be reported in the monitoring reports submitted by the Casino. How will EPA verify that the reports submitted are correct? I urge denial of the permit until end of pipe temperature can be verified.

RESPONSE: Consistent with the Basin Plan, which requires that the natural receiving water ambient temperature shall not be raised by more than 5 degrees Fahrenheit for waters with the designated use of WARM or COLD, the permit includes a provision that prohibits the receiving water ambient temperature from being raised by more than 5 degrees Fahrenheit.

5-24 – No mention has been made in the draft permit about the potential release of Uranium into the drinking water or into any water at all. No mention has been made of potential for radiological discharge into the stream. This is an ever increasing problem with wells that are dug deeper into the granite rocks in the area we are in.

RESPONSE: Consistent with the RB5 Basin Plan the permit requires that radionuclides not be present in concentrations that are harmful to human, plant, animal, or aquatic life nor result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal or aquatic life. Uranium is one type of radionuclide that is covered by this provision and therefore the permit prohibits the presence of uranium in such concentrations in the effluent being discharged by the Permittee.

5-25 - There is no reference in the draft permit as to what happens to accumulated sludge in the wastewater treatment plant. What happens to the sludge?

RESPONSE: As set forth in Part I. Section. E. of the permit, accumulated sludge in the wastewater treatment plant shall be either reused or disposed of in compliance with all the applicable portions of federal biosolids regulations found at 40 CFR Parts 257, 258 and 503.

5-26 –The permit should include biosolids (Sludge) requirements prohibiting runoff to run on or off any site that contains biosolids.

RESPONSE: The permit in Part I. Section E.10. states that any biosolids treatment, disposal, or storage site shall have facilities adequate to divert surface runoff from the

adjacent area, to protect the site boundaries from erosion, and to prevent any conditions that would cause drainage from the materials in the disposal site to escape the site. Thus the permit does include requirements prohibiting runoff to run on or off any site that contains biosolids.

5-27 The permit should include a requirement that no biosolids be land applied or stored on land under the jurisdiction of the State or County.

RESPONSE: The permit in Part I. Section E.12.b. states that if biosolids are shipped to another State or to Indian Lands, the permittee must send 60 days prior notice of the shipment to the permitting authorities in the receiving State or Indian Land (the EPA Regional Office for that area and the State/Indian authorities). Moreover, it is not within the purview of EPA's authority under the CWA to prohibit the Permittee from applying or storing biosolids on land under the jurisdiction of the State or County.

5-28 - The lack of receiving water monitoring in the permit is disturbing because there is no way for the permit to require the Casino to initiate monitoring to verify that they are not causing receiving water conditions to be violations of the narrative. In particular the DO limit is very specific in the permit, but there is no receiving water monitoring to confirm whether they are in compliance with that.

RESPONSE: EPA shares some of the commenter's concerns about receiving water monitoring and therefore has included a condition in the permit that requires the Permittee to monitor the receiving water at the farthest point practicable from the point of discharge which is still on Tribal land. Dissolved Oxygen (DO) levels are among the parameters to be monitored in the receiving water. Also see response to 5-19 above.

6 - GROUND WATER IMPACTS

6-1 – If discharges to land will be regulated under the NPDES permit and not a separate permit, the permit should include appropriate discharge specifications, groundwater receiving limits, and monitoring requirements to ensure compliance with the Basin Plan:

RESPONSE: The discharge to land will not be regulated under the NPDES permit. The Tribe is currently "authorized by rule" by the EPA for the subsurface discharge of wastewater from its existing treatment facility. This authorization is related to the fact that the Tribe has met the criteria specified by EPA's Underground Injection Control (UIC) Program pursuant to 40 CFR 144.24 of the Drinking Water Regulations.

6-2 - The permit should require at least quarterly groundwater monitoring of any Biosolids (Sludge) storage facility.

RESPONSE: The permit in Part I. Section E.5. includes a specific prohibition on any biosolid treatment, storage, use or disposal causing contamination of groundwater. As set forth in 40 CFR Part 503.16, the frequency of groundwater monitoring for various pollutants in the sludge is dependent on the amount of sludge generated. As the permit

states, all biosolids generated by the permittee shall be reused or disposed in compliance with the applicable sections of 40 CFR 503, as well as other applicable provisions of the biosolids regulations.

6-3 - The permit should evaluate the impacts the discharge to leach fields or seepage pits may already have on the receiving surface water.

RESPONSE: See response to 6-1 above.

6-4 - Will the existing leach fields continue to be used to minimize discharge?

RESPONSE: The permittee has indicated that it will continue to comply with its current authorization under the UIC program, and will seek to maintain the existing authorization indefinitely so that it has an ability to discharge to existing leach fields on an as needed basis.

6-5 - There is no study or monitoring required of the groundwater impact, no testing of water quality or water levels. There have been no monitoring wells that have been identified. No percolation or evaporation studies were provided that demonstrate that the discharge from the channels would not impact the existing private wells. Monitoring should be required of wells to establish a baseline and to documents affects of the discharge.

RESPONSE: The permit has established effluent limits at the end of pipe, without allowances for dilution, to protect the beneficial uses of Municipal and Domestic Supply (MUN), Agricultural Supply (AGR) and Ground Water Recharge (GWR) among the various beneficial uses specified in the Basin Plan, for the receiving water.

Consequently, the permit requires that the discharge meet all effluent limitations and standards necessary to protect the designated uses of the surface water as a source of drinking water. Any water infiltrated into the soils as a result of discharge to surface waters will necessarily be treated to the same standards to meet and protect such uses in private wells.

6-6 - We respect that the MBR system will produce water that meets California Title 22 requirements. Title 22, however, is still non-potable. Therefore, to dump this recyclable water directly into Coarsegold creek at this stage would without a doubt potentially affect the quality of groundwater. A study of impacts on ground water must be done before the permit is approved.

RESPONSE: See response to 6-5 above.

6-7 - The permit allows the tribe to discharge 350,000 gallons per day. This means that 350,000 gallons per day are likely being pumped out and being taken in by the Casino. Does anybody know what the water table is here? Does this mean that wells near the tribal facility will have to be re-drilled?

RESPONSE: The CWA provisions in regards to NPDES permitting regulate discharge from point sources to surface waters. The NPDES provisions do not address the issue of the source of water that is used by a facility and which eventually enters the facility's wastewater treatment plant, unless the water supply directly affects the surface water

quality. The impacts on groundwater tables are therefore outside the scope of this NPDES permitting action by EPA.

7 – PRIVATE PROPERTY ISSUES

7-1 – I have a well that is around 150 feet south of the proposed drainage course. I am quite certain that the well will eventually draw from the wastewater seepage. There is no doubt that my property value will be greatly decreased as I will have to disclose that there is wastewater flowing through my property and near my well. It is unfair that I should have to suffer this significant loss in property value to accommodate a commercial project which will generate significant gains for the Casino. I do not object to the Casino expansion in general. I request however that the permit be modified to mitigate my concerns.

RESPONSE: As noted in 6-5 above the permit has established both Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), and Ground Water Recharge (GWR) as beneficial uses specified in the Basin Plan. The permit establishes effluent limits and standards to ensure compliance with the MUN, AGR and GWR beneficial use characterization, and the permit has applied these limits at the end of pipe without allowances for dilution. The wastewater discharge effluent will be monitored as specified in the permit for compliance with beneficial uses associated with municipal drinking water supply, agricultural supply, and groundwater recharge uses. Any violation of the permit's effluent limitations and standards would be subject to enforcement by EPA under the Clean Water Act (CWA).

To the extent the commenter seeks information regarding personal or property damage claims, EPA cannot provide advice regarding such matters.

7-2 - How will EPA address the potential lowering of property values of private land owners near the discharge point due to the mandatory disclosure statement required by California for sale of property?

RESPONSE: See response to 7-1 above.

7-3 . Many of our farmers have to certify that their produce is free of treated wastewater and has not been irrigated by treated wastewater to get the best prices. If the Casino is allowed to discharge into Coarsegold creek and from there into the Fresno river and beyond, the farmers may not be able to certify their produce as not irrigated by treated wastewater. The socioeconomic impact to our farmers has not been established. Will the permit require such studies to be conducted and impacts quantified?

RESPONSE: See response to 7-1 above.

7-4 We are likely to be smelling the effluent from the Casino. We may be impacted by the smell to our property value. Has this been addressed in the permit?

RESPONSE: Consistent with the Basin Plan, the permit requires that the discharge shall not contain odor producing substances in concentrations that impart undesirable odors to domestic or municipal water supplies. The permit imposes this restriction under the

section on narrative water quality standards (Part I. Section A.2.k.) which prohibits such substances to be discharged by the permittee. Also see response 7-1 above in regards to impacts on property value from any such odor or smell.

8 - INSUFFICIENT DATA ISSUES

8-1 - There is not adequate data to demonstrate that proposed discharge channels have the carrying capacity to accommodate the amount of wastewater that could be produced. The criteria of the discharge volume relative to the flow of Coarsegold creek has not been addressed.

RESPONSE: The discharge channel on tribal land where the effluent is planned to be discharged is an unnamed tributary to Coarsegold creek. As indicated on the topographical map supplied by the discharger, with its permit application, this unnamed tributary receives water from at least two other unnamed washes, before emptying into two interconnected ponds on Tribal land. The upper and larger pond is separated from the lower and smaller pond by a small weir. Discharge from the smaller pond then discharges under Highway 41 via a 5 foot by 5 foot reinforced concrete box. Hydrologic studies of the site indicate that the likely 10 year flow from the pond is likely to range in the 37 cubic feet per second (cfs) range. The 100 year flow from the pond is anticipated to be in the 112 cfs range. The maximum design flow of the treatment plant at full design capacity is 350,000 gallons per day, with an average flow at full capacity of 240,000 gallons per day. 1 cfs = 650,000 gallons per day. Thus, at maximum capacity the flow from the treatment plant will not exceed 0.6 cfs and the average flow at full capacity would not exceed 0.4 cfs. This is between 1% and 1.6 % of the expected 10 year flow. Thus the carrying capacity of the discharge channel is sufficient to accommodate the amount of wastewater that could be produced.

Data on the flow in Coarsegold creek presented by the County of Madera in their Fresno River Nutrient Reduction Plan Report shows a yearly variance in in-stream flow from less than 0.1 cfs to over 11 cfs between May 2003 and April 2004, with peak flow in March 2004 and lowest flows in December 2003.

8-2 - What percentage of the Casino's toilets are currently being supplied by recycled water? What percentage of the toilets in the expansion facility will use recycled water?

RESPONSE: The Permit does not directly regulate the percentage of toilets that are to be supplied by recycled water. The permit merely requires the Permittee to maximize re-use and recycling to the greatest extent practical. Nevertheless, based on information that the Tribe provided, all the toilets and urinals on the Casino floor including toilets in office areas, and areas not accessible to the general public are supplied by recycled water. Toilets in the hotel rooms are not supplied by recycled water. The Tribe's application indicates that approximately 70% of the wastewater generated by the facility is from recycled sources, while about 30% is from non-recycled sources.

8-3 - Concerns that pharmaceutical contamination will be present in discharge and will affect groundwater. Current wastewater treatment facilities do not treat pharmaceuticals. Pharmaceuticals are released to wastewater by flushing unused medicines down the toilet and by passing through the body. The concentration of pharmaceuticals and recreational drugs in the wastewater may be concentrated due to the cross section of guests visiting the Casino. Will the permit require special limits on such chemicals in the treated effluent?

RESPONSE: The RB5 Basin Plan does not contain any water quality standards for pharmaceuticals and other drugs used by human beings. Additionally, there are no federal EPA approved water quality criteria for pharmaceuticals or other categories of drugs used by human beings, and neither has the Tribe adopted water quality standards for such parameters. Therefore EPA has not included limits in the permit for these parameters.

EPA is aware that many scientists and regulatory agencies are currently evaluating consumer products and pharmaceuticals that may be present in wastewater discharge, and that consumer products and pharmaceuticals may enter a treatment system through product use, improper disposal of products, and body burden. Research is also being conducted to determine the level of treatment achieved for these pollutants in wastewater treatment systems.

If EPA establishes guidance pursuant to CWA Section 304(a) on new or revised water quality criteria for pharmaceuticals or other consumer products, there are re-opener clauses in the permit that allow EPA to modify the current permit to include effluent limits to reflect such newly established criteria.

8-4 The Casino will be discharging onto tribal lands and then the water will flow onto private lands prior to entering Coarsegold creek. What permit is required to discharge onto private land?

RESPONSE: EPA's decision whether to grant or deny this NPDES permit is based on whether the proposed discharge complies with the requirements of the Clean Water Act. These include requirements to ensure that proper treatment is provided for the proposed discharge and that water quality is protected in the watercourse receiving the discharge.

The commenter appears to take the position that when a watercourse crosses private property it is inappropriate for a discharge to be authorized in that watercourse, or that a separate permit is required. The Clean Water Act does not authorize EPA to use this criterion for granting or denying NPDES permits. See 33 U.S.C. Section 1342; *NRDC v. EPA*, 859 F.2d 156, 169-170 (D.C. Cir. 1988) ("EPA can properly take only those actions authorized by the CWA—allowing, prohibiting, or conditioning the pollutant discharge"); see also *NRDC v. EPA*, 822 F. 2d 104, 129 (D.C. Cir. 1987). However, the granting of an NPDES permit does not create any property rights for the discharger nor does it authorize a discharger to infringe on another property owner's property rights.

8-5 - There are inadequate baseline studies of Coarsegold creek. We're told the discharge is not going to cause any problems with the creek. There is a list of threatened and endangered species found in the area. Do we have any proof that they don't live there? The EPA states that the discharge to Coarsegold creek in

compliance with this permit will have no effect on threatened and endangered species at this time. Who will be doing the study of plant and animal life downstream to establish a baseline and ensuring that there are indeed no impacts?

RESPONSE: The Endangered Species Act (ESA) requires and authorizes Federal agencies to evaluate the effects of their proposed actions on threatened or endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Specifically the ESA requires Federal agencies such as the U.S. Environmental Protection Agency (EPA) to ensure, in consultation with the U.S. Fish and Wildlife Service (USFWS), that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any Federally-listed threatened or endangered species or adversely affect critical habitat of such species. [40 CFR 122.49(c)]. Since the issuance of NPDES permits by EPA is a Federal action, consideration of a permitted discharge and its effect on any listed species is appropriate.

EPA has reviewed available information and concluded that discharge in compliance with the limits and other provisions of this permit will have no effect on Federally-listed threatened and endangered species. The fact sheet includes a section that outlines the process that EPA used to reach this conclusion. The draft permit and fact sheet were mailed to the local office of the USFWS at the time they were public noticed. No comments were received from the USFWS. If new information warrants it, EPA may decide that changes to the permit may be required and EPA will initiate consultation should such new information reveal impacts not previously considered, or should the activities affect newly-listed species. Re-opener clauses have been included in the permit should new information become available to indicate that the requirements of the permit need to be modified.

8-6 I've seen no environmental report identifying plant or animal species, such as the Casino had to prepare for the construction, all the way down to Hensley Lake. I believe there should be study of this nature before the permit is issued.

RESPONSE: See response to 8-5

8-7 – The draft permit indicates that there is a about a one mile stretch from the discharge point to where it leaves tribal land. The permit creates the impression that the discharge water will rarely leave the tribal land. How many gallons does it take for the discharge to reach the edge of tribal land?

RESPONSE: The amount of water discharged that may reach the edge of tribal land is dependent on various factors, including the presence or absence of water in the unnamed stream into which the discharge occurs, the ambient temperature and the ability of the streambed, if no water is present, to absorb water. Additionally the water discharged in the stream on tribal land will enter two interconnected ponds which are also on tribal land, and depending on the level of water in the pond, the discharged water may or may not result in a discharge off tribal land. Therefore there is no simple answer as to how many gallons does it take for the discharge to reach the edge of tribal land. However, the permit has requirements that water leaving tribal land be monitored periodically for the same set of pollutants, that are to be monitored in the effluent. The permit requires any discharge off tribal land to be monitored within 24 hours after there has been any non-compliance event at the wastewater treatment facility.

8-8 - The draft permit has a lot of N/As in the table for information about discharge water quality, because there isn't currently any discharge. However the Casino currently is generating treated wastewater and there are tests that could be run to get information about current effluent quality, if you wanted.

RESPONSE: As described in the Fact Sheet, the Tribe does not have an existing NPDES permit because it recycles, re-uses, or disposes via spray fields or leach fields all of the wastewater effluent it generates. The tribe does not currently discharge to surface waters, and therefore there is no DMR data for any parameters of water quality. Additionally, the treatment process that the current treatment facility uses, an activated sludge process known as a sequencing batch reactor (SBR) is different from the proposed treatment process which will be a membrane bioreactor (MBR) system. Therefore water quality for certain parameters could vary with the type of treatment system, so any test done on the current effluent generated would have only limited utility to assess the likely water quality when the effluent is treated using the new MBR system.

8-9 – No studies have been done on what effect the additional flow to Coarsegold creek is going to have on plant life and on insect life, specifically mosquitoes, which are now going to have more water over a longer period of time in which to breed. The impacts of this on mosquito borne diseases such as West Nile fever have not been studied. EPA should require such studies, or else require that there be no discharge into the creek in the summer or spring or fall.

RESPONSE: See response to 8-1 and 8-5.

9 – CASINO EXPANSION CONCERNS

9-1 - If the Casino cannot accommodate the amount of sewage it generates on a daily basis on its own tribal land, which constitute more than 150 acres, then the Casino must be willing to scale down their ambitions to build and extend their gaming business.

RESPONSE: The CWA does not authorize EPA under the NPDES program to regulate the size of the facility. The issuance of the NPDES permit under the CWA simply regulates the discharge of pollutant through a point source to a water of the U.S. As long as the discharge to the surface water is in compliance with the permit limits and conditions, and protects the beneficial uses of the receiving water, the size of the facility generating the discharge cannot be regulated under a NPDES permit which in and of itself does not convey nor deny the Permittees' right to develop property.

10 – PLANT OPERATIONS AND NOTIFICATION OF NON-COMPLIANCE

10-1 – The permit should not only require the discharger to prepare a Quality Assurance (QA) Manual, but also put in a time frame for it, ensuring that the Manual is completed prior to commencement of operations.

RESPONSE: The permit contains requirements for the Tribe to develop a QA manual if it plans to collect samples for analysis by an independent laboratory. The permit requires

in Part I Section B.1.e that the QA manual must be developed within 90 days of the permit issuance or prior to the Permittee collecting any samples, whichever occurs first.

10-2 - The permit should require local and State agency notification in addition to notification to EPA under the requirements of 24-Hour reporting of Noncompliance.

RESPONSE: The permit in Part I. Section B.3. requires not just the CWA Compliance Office Chief at EPA, but also the Environmental Health Director at Madera County Resource Management Agency to be notified within 24 hour from the time the permittee becomes aware of the circumstances of any noncompliance which may endanger human health or the environment.

10-3 - What type of alarm or other notification program will the EPA set up to protect the residents along the creek in case of spills or other Noncompliance? The permit should require notification to affected downstream property owners of any Noncompliance event.

RESPONSE: The permit as indicated in 10-2 above requires 24-hour reporting of any noncompliance which may endanger human health or the environment both to EPA and to Madera County. The CWA does not authorize EPA to require that the Permittee provide notification of any noncompliance event to each and every downstream property owner. EPA believes that notification to the County and to EPA's CWA Compliance Office is adequate to protect the beneficial uses of the receiving waters downstream, in case of a noncompliance event.

10-4 - There should be a back up plan in the case the facility cannot treat the effluent generated. There should be a holding pond or holding tanks that the effluent could be diverted to, in case of an emergency, upset or other problem with the treatment facility. The tribe indicated that it had 20,000 gallons worth of such storage capacity. The capacity of such storage should be appropriate to store sufficient effluent to allow for time to get the treatment plant back operating properly.

RESPONSE: The tribe has indicated in communications with the EPA and in their application materials that it currently has on-site tanks with storage capacity of 200,000 gallons of raw effluent, not 20,000 gallons as the commenter suggests. In addition to this the Tribe also has storage capacity of 1,500,000 gallons of treated wastewater. The tribe uses this capacity to regulate the flow of recycled water to its facilities, as well as to regulate flow for on-site irrigation, fire suppression, and subsurface disposal as needed. The tribe will continue to maintain its current storage capacity both for untreated wastewater and for the treated effluent.

10-5 - Will the current SBR treatment system be allowed to discharge into the creek while the new MBR treatment system is being brought on line?

RESPONSE: No discharge from the current SBR treatment system will be allowed into the creek while the new MBR treatment system is being brought on line.

10-6 - Will there be signs posted along Coarsegold creek stating that the water is unsafe to drink or swim in?

RESPONSE: The discharge of treated effluent in compliance with the permit limits, is designed to protect the designated beneficial uses of the receiving water. The designated beneficial uses of the receiving water to be protected include its use as Municipal Water Supply or potential Municipal Water Supply (MUN) as well as its use for Contact Recreation (REC-1). However, there may be other potential sources of pollutants that discharge from point or non-point sources into Coarsegold creek and impact the quality of the water in the creek. This is a matter for the local health authorities or other agencies. EPA has no authority or obligation under the CWA NPDES regulations to regulate such additional sources or to require any signs.

10-7 - The permit should require the wastewater treatment plant to be operated by individuals certified by the State of California or its functional equivalent.

RESPONSE: EPA believes that the permit adequately addresses requirements for operation and maintenance, as well as operator training. Specifically, the permit includes several requirements to properly maintain the facility, including having trained personnel operate the facility. Additionally, the permit requires that the operator have training and/or certification equivalent to those requirements of the State of California and sufficient to operate and maintain the plant.

10-8 - I have visited the Casino and toured their treatment facility and talked to their operators. They appear to be well trained and competent. The Casino has gone the extra mile in everything they have done.

RESPONSE: Comments noted.

10-9 - The permit should require that all analyses to be performed by laboratories certified by the California Department of Health Services.

RESPONSE: EPA agrees and has modified language in the permit to clarify that all laboratory analyses for the purpose of complying with the permit will be performed by laboratories certified by the California Department of Health Services.

10-10 - It appears that the draft permit allows the laboratory analysis to be actually performed by the tribe itself, provided it had its own Quality Assurance (QA) manual. This should not be permitted.

RESPONSE: No. See 10-1 and 10-9 above.

11 - ENFORCEMENT ISSUES

11-1 - Outside monitoring by non-affiliated parties should be required in the permit. Can EPA impose a monitor to monitor the monitor, someone from, if not from the State, then from a private institution, that could come in and do the weekly and monthly testing and monitoring.

RESPONSE: No. Under the NPDES program at all facilities across the nation EPA relies on Permittee self-monitoring, with oversight by EPA (or the authorized State or Tribe) to monitor compliance with the permit limits.

This permit requires that the permittee prepare a Quality Assurance Plan, provide monitoring results to EPA, utilize EPA approved methods under the Clean Water Act, use certified laboratories, and maintain records of monitoring. These are standard components of all EPA issued permits and are included in the final permit. The Permittee is required to submit monitoring reports to EPA. These reports must be certified and signed by a duly authorized representative of the Tribe. If false data is submitted, the Permittee is subject to civil and criminal liability. EPA does not typically require independent monitoring for other permittees, and EPA does not agree that monitoring needs or should be conducted by an independent entity or agency for the Chukchansi Casino permit.

11-2 - Will EPA be on site to insure no untreated sewage is discharged into Coarsegold creek? Would EPA mandate that the Casino set up a Memorandum of Understanding (MOU) with Madera County and or the State/Regional Water Quality Board to ensure periodic visits by inspectors for public reassurance and transparency?

RESPONSE: No. See response to 11-1. The Water Division at EPA Region 9 has a Clean Water Act Compliance Office who conduct periodic inspections of facilities that have EPA issued permits through out the region. The Compliance office also responds to complaints about potential violations of permit requirements that are brought to its attention. Specifically, under the CWA general principals and Federal Indian Law, EPA's Office of Regional Counsel and the Department of Justice work on Enforcement matters, where Permittees are found to be violation of their permit requirements. EPA believes it has adequate resources to oversee compliance with the permit requirements by the permittee. Nevertheless, EPA will work cooperatively with Madera County and or the State/Regional Water Quality Board on any issues related to the operation of the wastewater treatment plant that may fall within the jurisdiction of these entities.

11-3 - What policies will EPA enforce to ensure compliance if the Casino is found to be violating permit restrictions ?

RESPONSE: Section 309 of the CWA provides EPA with enforcement authority over this NPDES permit. Wherever EPA finds that a permittee is violating NPDES conditions, EPA has the authority to issue an administrative order requiring compliance with the permit conditions or bring a civil action. See, CWA Section 309(a). In addition, criminal penalties are available for negligent or knowing violations of permit conditions, knowing endangerment relating to permit conditions, or issuance of false statements or representations in connection with NPDES permits. CWA Section 309(c). Any wrongful introduction of materials into a treatment plant in violation of the toxic and pretreatment effluent standards of CWA Section 307 can result in civil actions. A wide array of administrative, civil, and criminal penalties, including fines and prison terms, may be imposed for violations of permit requirements. See CWA Sections 309(c), (d), (g).

11-4 - Why is wastewater flowing down the creek every weekend from the Chukchansi Casino since the first of the year? I thought the permit and installment of the new system was not yet complete.

RESPONSE: Currently the WWTP does not have authority to discharge any effluent to surface waters. The commenter should contact EPA's CWA Compliance Office if they have information that there is wastewater flowing down the creek from the Chukchansi Casino, as the Casino is not yet authorized to discharge to surface waters. Un-permitted discharge could result in an array of administrative, civil and criminal penalties.

11-5 - There is no limited waiver of domestic sovereignty by the tribe, which means that the State's ability to regulate and enforce standards on treated water leaving tribal land is minimal. EPA has no ability or staff to adequately enforce or inspect this permit.

RESPONSE: See response to 11-2 above.

11-6 - Since the County no longer says they have jurisdiction, whom do we call if we see something untoward in the creek?

RESPONSE: The commenter or any other person who sees something that they believe is a violation of any of the permit limits or conditions should contact EPA or the Madera County Resource Management Agency at the telephone numbers provided in permit. Only EPA has enforcement authority under the permit, but the County of Madera has voluntarily agreed to receive notification of any suspected violations, which it will then pass on to EPA's Compliance Office.

12 – ALTERNATIVE USES OF TERTIARY TREATED EFFLUENT

12-1 – The Casino obviously has a permit to truck sewage sludge off the site, so why can they not ship the treated effluent off site? Oakhurst Water Treatment will take it for nine dollars a load to spray on their fields.

RESPONSE: The CWA does not require EPA or any other regulatory agency to mandate how, or to what extent, an applicant for an NPDES permit should re-use or recycle the effluent they generate. Rather, the CWA requires EPA to evaluate both the quality and quantity of the discharge in order to ensure that such discharge does not cause violations of the designated beneficial uses of the receiving water. As described in the Fact Sheet, EPA has established effluent limitations and monitoring requirements as specified in the CWA to protect all the applicable beneficial uses of the receiving waters, which include meeting effluent limits without an allowance for dilution to protect Agricultural Supply (AGR), Municipal Supply (MUN), Ground Water Recharge (GWR) Water Contact Recreation (REC-1), Other Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD). EPA has also included a limit on the maximum total flow permitted.

Additionally, the permit provides that the Permittee will recycle and re-use as much of the treated effluent as practical. These provisions, plus the Tribe's own interest in reducing its water usage to the maximum extent possible, will provide an incentive for

the Tribe to consider any economically and environmentally sound options to reduce their discharge from their new wastewater treatment facility to the greatest extent possible.

12-2 - The Casino should be required to use the treated effluent to grow trees on its own land.

RESPONSE: See response to 12-1 above.

12-3 - The Casino should be required to use the treated effluent for dust abatement and/or fire suppression.

RESPONSE: See response to 12-1 above.

12-4 - The Casino should be required to inject the treated effluent underground to boost the water table.

RESPONSE: See response to 12-1 above.

12-5 - The Casino should be required to add an additional leach and/or spray field to contain all treated effluent discharges on newly acquired land

RESPONSE: See response to 12-1 above.

12-6 - Several ideas by professionals in the field have indicated that it would be feasible to take the treated effluent discharged to a drinkable state at a relatively low cost based on the overall cost of the project. EPA should mandate in the permit that the treated effluent be further treated to make it drinkable

RESPONSE: See response to 5-19 and 12-1 above.

12-7 - Why can't there be some way for EPA to force the Casino to reuse the water on site? I just want to ask the EPA to consider, if you don't have the authority now, to put in effect a law that if there's water being used that can be reused and kept on site, that it should be kept on site.

RESPONSE: EPA is a federal agency that executes laws and regulations that are enacted by the legislative branch of the federal government. EPA has no independent authority to enact federal laws or regulations, beyond the authority in laws passed by Congress. Congress has not delegated to EPA the authority to enact any laws mandating recycling or re-use on-site of treated wastewater generated by an NPDES permit applicant or permittee.

13 PROCEDURAL QUESTIONS

13-1 - Is the permit a done deal? I would like to be assured by the EPA that there will be consideration to what we are saying here. Does EPA have the power to dismiss everything said and issue the permit anyway?

RESPONSE: As required by 40 CFR Section 124.17, EPA has considered all the comments received, in writing, via email or orally at the public hearing and prepared written responses to these comments before making its final decision. This Response to

Comments document has been developed to provide EPA's written response to all comments it received on its proposed permit.

13-2 - When do we get to see EPA's prepared responses to comments? Is there a way to dispute the EPA's response to comments?

RESPONSE: As provided in 40 CFR Sections 124.11, 124.15 and 124.17, EPA is required to consider public comments it receives and to prepare a Response to Comments document which addresses the comments it received. EPA is required to issue the Response to Comments at the same time it issues a final permit decision. As provided in 40 CFR Section 124.19, any person who commented on this permit, may file a petition for review. Detailed information about the requirements for filing a request for review can be found in 40 CFR Section 124.19.