Exhibit T

Dry Creek Rancheria
NDPES Permit No. CA 0005241

RESPONSES TO COMMENTS DOCUMENT

Written Comments Received:

	Commenter	Signed by	Comments Dated	Comments
001	Congressman Mike Thompson	Congressman Mike Thompson	9/18/06	1, 9, 9-1, 9-2, 9-3, 6, 8, 4-1, 3, 8-2
002	California Regional Water Quality Control Board North Coast Region	Catherine Kuhlmann	10/2/06	5-8, 6-1, 5-2, 11-1, 5-6
003	Sonoma County Board of Supervisors	Paul Kelley	9/29/06	1,2,3, 4-1, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-10, 5-11, 5-12, 5-13, 5-14 6, 6-2, 6-10, 6-12 7-1, 8-3, 9 , 9-4 10, 12-1, 12-13
004	Alexander Valley Association	Candace Cadd	9/27/06	2-1, 3-2, 5, 5-1, 5-4, 5-9, 5-10, 5-15, 5-16, 5-17, 5-18, 5-19, 5-20, 5-21 6-2, 6-3; 6-5, 6-10, 8 , 9-1; 9-3, 9-4; 9-5, 10 11-2, 12-1, 12-2, 12-3
005	Russian Rivers Property Owners Association	Alvin Cadd	9/30/06	2-1,2-2
006	Stand up for California	Cheryl Schmit	10/2/96	13
007	Wagner & Bonsignore	Paula Whealen	10/2/06	9-1, 9-4, 8-3, 7-1, 6-1, 5-3, 3
008	Marcia Teuschler	-	none	2-1, 9-3
009	Field Stone Winery	John Staten	9-25-06	3, 1, 5-3, 6-1
010	Steven Oliver	-	none	3, 2-2, 1, 6-2, 7-1, 5-3
011	Lois Chapin	-	9/28/06	2-1
012	Lynn and Seaver Page	-	9/28/06	10, 2-1

013	Marge & George Grasso	-	9/28/06	2-1, 3
014	Karen Dean Abbe	-	none	3, 8, 5-9, 2-1
015	James Family	-	9/26/06	2-1, 8, 1
016	Michael & Carole Farrell	-	9/21/06	2-1
017	Jerry Reedy	-	none	6-4, 8-4, 6-5, 8-1
018	Harry Black	-	9/26/06	6-6, 6-7, 7-2, 9-3, 8-5, 11-3, 1
019	Summer Tompkins Walker	-	none	3, 1, 6-2, 8-1
020	Brooks Walker	-	None	3, 1, 6-2, 8-1, 2-1
021	Larry Cadd	-	10/1/06	2-1, 4-2, 5-4, 5-22, 6-3, 6-6, 6-8, 6-9, 7-2, 7-3, 8-2, 8-6, 10, 11-4, 12-1, 13
022	Hafner Vineyard	Richard Hafner	9/29/06	2-1, 5-1, 5-9, 5-9
023	Ralph and Janice Sceales	-	9/18/06	2-1, 11-4, 3
024	Farry Gransotto	-	9/7/06	9-3
025	Alvin Cadd		9/7/06	5-4
026	John Alden		9/7/06	6-12
027	Phil Wright		9/7/06	2-3
028	Hale Alshahavany		9/7/06	2-1
029	Graid Enyart		9/7/06	2-1
030	Marjorie and Philip Lilienthal		9/27/06	2-1, 1, 5-4
031	David Mahoney	-	None	3
032	Copper Ranch Partnership	Doreen Clay	9/30/06	2-1, 8
033	[no 033]	-	-	-
034	Winn Ellis		None	3
035	Marjorie Montaldo		10/5/06 *	5
036	Roland Hartsough		10/7/06 *	3
037	Sierra Club – Redwood Chapter	Anne Hudgines, Leonard Holt	9/30/06 *	1, 3, 5-3, 5-9, 6, 6-1, 7-1, 8

* Comments postmarked after close of comment period. Although EPA is not obligated to respond to these comments, EPA has addressed these comments in full.

Public Hearing Testimony received on September 7, 2006

	Commenter	Representing	Comments *
PH1	John Ilg &	FWS Environmental Solutions, Inc representing Dry Creek Rancheria	2-2
PH2	Erich Fisher	Environmental Science Associates, representing Dry Creek Rancheria	2-2
PH3	Liz Elgin Derouen	Tribal member	2-2
PH4	Cheryl Diehm	Congressman Mike Thompson	*
PH5	Catherine Kuhlman	Regional Board 1	*
PH6	Reg Elgin	Tribal member	2-2
PH7	Jeff Brax	Sonoma County	*
PH8	Ralph Sceales	Alexander Valley Association	*
PH9	Pete Dayton	Alexander Valley Association	*
PH10	Dick Hafner		*
PH11	Candy Cadd	Alexander Valley Association	*
PH12	Paula Whealen	Representing Ferrari-Carano Vineyards	*
PH13	Jerry Reedy		*
PH14	Wes Brubacher		6-4, 9-1, 5-12
PH15	Bill Esselstein	Alexander Valley Association	*
PH 16	Bev Wasson		11, 9-3, 9-6, 7-2
PH 17	Chris Romo		5-23
PH 18	Phil Wright		2-2, 2-4, 5-24
PH 19	David Fanucchi		8-2, 11-3, 5
PH 20	Larry Cadd		*
PH 21	Dennis Murphy		5-6, 8-5, 13, 12
PH 22	Millie Bisset		5-25

* Commenters denoted with a "*" have also provided written comments. All oral comments that repeat written comments submitted 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 hearing/comment extension.
2. General support or opposition to permit. (4 comment subcategories)
3. NEPA (2 comment subcategories)
4. Concerns about notification of proposal. (3 comment subcategories)
5. Concerns on adequacy of wastewater treatment system & monitoring requirements (25 comment subcategories)
6. Concerns about discharge to Stream A1. (12 comment subcategories)
7. Concerns about discharge to Stream P1. (3 comment subcategories)
8. Concerns related to private property. (6 comment subcategories)
9. Concerns about insufficient data to adequately evaluate the permit application (6 comment subcategories)
10. Casino expansion concerns.
11. Ability to enforce permit. (4 comment subcategories)
12 Adaptive Management Plan /capacity of Stream A1. (2 comment subcategories)
13. Definition of "Indian Country."

COMMENT RESONSES
Comments in BOLD
Responses in plain text

1 - Request EPA to hold a public hearing and/or request extension to comment period. Request that a second public hearing and notice & comment period be held due to inadequate data provided.
RESPONSE: Due to the significant public interest in the process, EPA held a public hearing on September 7, 2006 in Geyserville, CA and extended the comment period until October 2, 2006. EPA issued the public notice on June 29, 2006, allowing over 90 days of availability for public comment. Comments specific to issues of inadequate data are addressed in Section 9 of this document. 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.

EPA does not believe that additional time for review and comment or an additional public hearing are warranted. Further, EPA does not believe that the Tribe's decision not to request authorization to discharge to Stream A1 has changed the permit sufficiently to warrant an additional hearing or additional time for review and comment.

2 -1 - Oppose EPA issuing a NPDES permit to the Tribe.
RESPONSE: Comments noted.

2-2 – EPA is showing "favoritism" to the Tribe and would not grant a wastewater discharge permit to other organizations and bypass the required process. 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: EPA is committed to ensuring that the Tribe meets all requirements of the Clean Water Act similar to all other facilities that receive NPDES permits. As described in the Statement of Basis, 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 Agricultural Supply, Industrial Service Supply, Groundwater Recharge, Freshwater Replenishment, Navigation, Water Contact Recreation, Non-Contact Water Recreation, Commercial and Sport Fishing, Warm Freshwater Habitat, Cold Freshwater Habitat, Wildlife Habitat, Rare, Threatened, or Endangered Species, Migration of Aquatic Organisms, and Spawning, Reproduction, and/or Early Development as specified in the Water Quality Control Plan for the North Coast Region ("Basin Plan").

2-3 - Support EPA issuing a NPDES permit to the Tribe. The Tribe should be treated as fairly as the City of Healdsburg, Windsor or Santa Rosa and should be given the same opportunity to discharge into the Russian River as the cities are given with the same requirements.
RESPONSE: Comments noted.

2-4 - The Tribe should be treated fairly. If the permit establishes the same regulations, monitors them the same way, and requires state of the art treatment system like other municipalities, this will be a safe project, will not hurt the environment, and EPA should issue the Tribe a permit.
Response: Comment noted. See response to 2-2.

3 - EPA should conduct a NEPA analysis. EPA should exercise its discretion and require compliance with the NEPA review process in order to help identify, isolate, and remedy potential problems before they occur. (also refer to Comment Appendix from County of Sonoma and Sonoma County Water Agency: Commenter 003)
RESPONSE: EPA has not conducted a National Environmental Policy Act ("NEPA") analysis for this NPDES permit. The Clean Water Act ("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 § 306. A new source is defined as a facility which commenced construction after the promulgation of standards of performance under § 306 of the CWA which are applicable to such source. 40 C.F.R. § 122.2. EPA has not financially assisted the construction of this facility, nor has it promulgated § 306 standards of performance for publicly owned wastewater treatment plants. Therefore, NEPA analysis is not required in this case.

EPA believes that all comments on the proposed permit and concerns related to the discharge of wastewater as allowed by the NPDES permit have been adequately addressed through the public comment process for the NPDES permit. EPA does not agree that additional NEPA analysis is warranted.

3-2 - The environmental consequences of the plan need to be accurately assessed. It is foolhardy to issue this permit without regard for obvious environmental implications of known conditions. It may be one thing to exempt compliance with environmental regulations where there is no indication that significant environmental impacts are expected...A thorough environmental assessment must be demanded and released for public review.
RESPONSE: EPA is not exempting the permittee from compliance with any environmental regulations. As described in the Statement of Basis, the permit establishes effluent limitations and standards that meet all requirements of the Clean Water Act, that meet national technology-based standards for treatment performance, and that fully protect all beneficial uses of the receiving waters.

4 - Concerns that the public and local landowners were not adequately notified of proposal.

RESPONSE: The proposed permit was noticed in the local paper and known interested parties were notified directly by email and/or direct mailings of the notice. EPA directly notified all adjacent landowners prior to the public hearing. The hearing was public noticed in the local paper and an additional notice was given of a re-opened comment period. Interested parties and parties submitting comments on the proposal were notified by email and/or direct mailings of the notice. Several articles were published in the local paper regarding the permit. EPA has 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.

4.1 - Neither EPA nor the Tribe conferred with affected property owners on possible impacts of the discharges through and on their property.
RESPONSE: EPA directly notified affected landowners of the permit application and public hearing through mailings, and gave them the opportunity to provide comments.

4.2 - Request that local landowners be involved in permit
RESPONSE: EPA directly notified affected landowners of the permit application and public hearing through mailings, and gave them the opportunity to provide comments.

4-3 - EPA has not made available materials and documents that were cited in the fact sheet.
RESPONSE: All materials cited in the Statement of Basis have been available to the public throughout the comment period and may have been obtained through a request made to EPA. Contact information for EPA (email, phone number, and 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 to explain the details of the permit and to answer questions from the public.

5 - Concerns on adequacy of wastewater treatment system & monitoring requirements
5-1 - The proposed permit does not appear to require any testing or monitoring to ensure compliance with limitations for 15 separate limitations on the Russian River and tributaries (Permit at 6-7), including temperature, turbidity, dissolved oxygen, pH.
RESPONSE: The commenter is not correct. The permit as proposed and adopted contains a combination of numeric and narrative standards, which include monitoring the discharge and the receiving waters for parameters such as temperatures, pH, dissolved oxygen, and turbidity as appropriate. As described in the Statement of Basis, the effluent limits and narrative standards are based on Basin Plan requirements, national technology-based standards, and EPA Region 9 policy. The specific monitoring requirements and monitoring locations are found in Section I.C.2 of the permit, and include weekly monitoring above and below the discharge when water is present for: pH, dissolved oxygen, turbidity, and temperature. Additionally, the permit incorporates testing for priority pollutants and whole effluent toxicity to demonstrate that the discharge is

meeting all requirements. Limitations for temperature are included in the permit at Section I D.10.

5-2 - Monitoring results should be sent to the Regional Board and other agencies with jurisdiction over the Russian River and its resources.
RESPONSE: Monitoring results are considered publicly available information and are available to all who request them. Per the specific request of the Regional Board, monitoring reports will be forwarded directly to the Regional Board. Per the specific request of the Regional Board, language has been added to the permit that requires the permittee to notify the Regional Board in cases of emergencies such as spills or significant violations of the permit that may cause significant harm. Any member of the public wishing to obtain monitoring results may contact EPA for copies.

5-3 - EPA should require effluent monitoring by an independent agency.
RESPONSE: Nationwide, the NPDES program relies on permittee self-monitoring, with oversight by EPA (or the authorized State or Tribe). The permit requires that the permittee prepare a Quality Assurance sampling plan (Section III.B.5 of permit), 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 monitoring need be conducted by an independent agency for the Dry Creek permit.

5-4 - EPA should not issue a permit until priority pollutant monitoring and WET monitoring has been conducted.
RESPONSE: As described in the Statement of Basis, the Tribe does not have an existing NPDES permit and therefore has not discharged to surface waters. Therefore, for a new permit, EPA originally proposed that monitoring of priority pollutants and WET be conducted within 90 days of permit issuance. This is a typical provision established for new permits.

However, the Tribe is currently operating a fully functional wastewater treatment system (recycling/reusing all effluent) and the Tribe therefore was able to conduct a priority pollutant analysis prior to discharge in response to concerns raised by commenters. A copy of the monitoring data that was provided by the Tribe is included in the appendix to this document.

The results of the priority pollutant scan indicated results of Non Detect for all parameters with the exception of Aluminum (130 ug/L), Nickel (5.2 ug/L), Zinc (15 ug/L) and chloroform (0.66 ug/L). These results are included in the appendix of the comment response document. The results of the priority pollutant scan demonstrated that all priority pollutants were detected below applicable water quality standards.

EPA conduted a statistical analysis to evaluate if the discharge has a reasonable potential to cause or contribute to an exceedance of water quality standards. Based on

hardness data obtained from the effluent (147 mg/L), EPA calculated the most stringent water quality standard for each pollutant and compared the water quality standard to the projected maximum expected value of the discharge in accordance with EPA guidance procedures in the Technical Support Document for Water Quality Based Toxics Control. Based on these results, EPA conducted the following reasonable potential analysis:

Detected Analyte	**Observed value**	**Projected maximum concentration (based on 95% confidence, 95% probability, Cv=0.6)**	**Most stringent water quality standards**	**Reasonable Potential ?**
Aluminum	130 ug/L	806 ug/L	1,000 ug/L (drinking water supply)	No
Nickel	5.2 ug/L	32 ug/L	72 ug/L (aquatic life, chronic)	No
Zinc	15 ug/L	93 ug/L	165 (aquatic life, chronic)	No

Therefore, based on a reasonable potential analysis performed by EPA, there is no reasonable potential to cause or contribute to a violation of water quality standards. Therefore, no additional effluent limits are required in the permit at this time. The permit will continue requirements for monitoring, and EPA will continue to evaluate monitoring results to determine if additional effluent limitations are required in the future.

5-5 - "USEPA should require the Tribe to disclose BOS (sic) and TSS levels in its existing influent water, rather than assuming them to be the same as "typical gaming facility" wastewater. The USEPA does not appear to have done so, even though these values are readily available and easily determined. The County appreciates the USEPA's willingness to impose BOS and TSS standards more stringent than technology-based standards. (SOB at 9, 11.) The USEPA nevertheless appears to have repeatedly refused to ask for readily available and potentially valuable information. The USEPA's repeated refusals, and its potential issuance of an NPDES permit without this information, appear unreasonable."
RESPONSE: EPA does not understand the commenter's concern. EPA has not refused to ask for data. As described in the fact sheet, the NPDES permit establishes effluent limits for the control of BOD and TSS which include concentration limits, mass limits, and minimum levels of treatment performance. In order to determine level of performance, measured as a percent removal of BOD and TSS, the permit establishes monitoring requirements for both influent and effluent concentrations so that the percent removal rate may be calculated. EPA does not establish effluent limits nor establish any regulatory requirements for the influent concentrations of BOD and TSS to a wastewater treatment

system. Furthermore, EPA did evaluate the expected influent concentrations of BOD and TSS in order to assess the capability of the treatment system (flows, retention times, treatment technology, etc) to meet required treatment performance. EPA concluded that the treatment system is capable of meeting all effluent limits.

5-6 - Chlorine: It appears that the Permittee will utilize chlorine for disinfection. 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 and that levels in discharges to receiving waters be monitored on a continuous basis
RESPONSE: As stated in the Statement of Basis, the permittee utilizes ultraviolet disinfection, not chlorine, for disinfection of wastewater that is discharged to surface water. The permittee only utilizes chlorine for disinfection of wastewater in the rare case that ultraviolet disinfection was not available, and to maintain a chlorine residual in the on-site recycled water distribution system. Therefore, based on the operation of the wastewater treatment plant, chlorine is not expected to be present in the discharge to waters of the U.S.

However, due to the use of chlorine at the facility and its presence in the distribution system, and in order to address the commenter's concern, EPA has agreed that there may be a reasonable potential for chlorine to be present in the discharge. EPA has therefore revised the permit to include chlorine limitations, to be monitored once per week.

5-7 – Acute testing:
"The proposed permit would require chronic bioassay monitoring in the first, third, and fifth years of the permit (Permit at 2, 4), but does not appear to require acute bioassay testing at all. The North Coast Regional Water Quality Control Board typically requires discharges to the Russian River to conduct 96-hour static, non-renewal acute bioassay monitoring on a monthly basis during discharge. The species is usually rainbow trout with the following conditions: (1) Single sample bioassay result less than 70 percent survival; (2) Median for any three or more consecutive bioassays less than 90 percent survival. The proposed permit should be revised to require acute bioassay testing in addition to chronic bioassay monitoring."
RESPONSE: As indicated in the Statement of Basis, the permit requires that all effluent limits be met without the allowance of dilution. Therefore, a chronic toxicity test is necessarily more stringent than an acute test. If the wastewater is acutely toxic, then the chronic test will automatically result in failure due to death of the organism population. EPA has included the most stringent WET test in the permit to demonstrate that the wastewater is not resulting in toxicity to the receiving water. Therefore, it is duplicative and unnecessary to require that a separate, less stringent, acute test be conducted in addition to the chronic test.

5-8 - 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.
REPSONSE: Comment noted.

5-9 - Monitoring for toxics once every other year is too infrequent. Suggest WET testing monthly (versus every other year); temperature testing continuous (versus no requirement); priority pollutant testing monthly (versus every other year); chlorine residual continuous (versus weekly); hardness weekly (versus no requirement); turbidity continuous (versus weekly) and pH continuous (versus weekly)
RESPONSE: EPA believes that the monitoring for toxics is consistent with the type of wastewater being discharged, the level of treatment provided, and the volume of flow being discharged. Monitoring for toxics every other year is consistent, if not more stringent, than many similar types of facilities with similar flow regimes.

The commenter is incorrect regarding several monitoring parameters. Receiving water monitoring for temperature, pH, and dissolved oxygen was proposed and continues to be required weekly (Part I.C.2 of permit); Monitoring for hardness is required weekly (PartI.C.1 of permit); and turbidity is required continuously for reclaimed water.

EPA does not believe that the monitoring frequencies requested by the commenter are necessary or reasonable. As described in the Statement of Basis, EPA evaluated the reasonable potential for pollutants to cause or contribute to an exceedance of a water quality standard based on a number of considerations which include dilution in the receiving water, existing data on toxic pollutants, type of industry, history of compliance problems and toxic impacts, type of receiving water, designated uses, and other factors. EPA believes the monitoring required for this discharge is sufficient to fully document compliance with effluent limitations.

However, in order to address commenter concerns, EPA has decided to increase monitoring for toxics and WET to once per year for the period of this permit.

As comparison, the NPDES permit for the Sonoma County Water Agency and Russian River County Sanitation District (CA0024058) has an average daily design flow of 0.71 mgd, approximately 5 times the design flow of the Dry Creek Rancheria, and requires weekly monitoring for BOD and TSS (equivalent to Dry Creek), daily for temperature (compared to weekly for Dry Creek), daily for chlorine (compared to weekly for Dry Creek, although Dry Creek uses ultraviolet disenfiction instead of chlorine), priority pollutant monitoring once every 5 years (compared to once per year for Dry Creek), annually for chronic toxicity (equivalent to Dry Creek) and monthly for acute toxicity (not required monitoring for Dry Creek). The Russian River CSD also establishes effluent limits for a number of toxic pollutants (including copper, lead, chloroform, etc,) which have demonstrated a reasonable potential to cause or contribute to an exceedance of water quality standards for the Russian River CDS, but which have not shown a reasonable potential for the Dry Creek discharge and are therefore not regulated. Therefore, EPA believes that the monitoring requirements for the Dry Creek permit are comparable, if not more stringent, than other, larger POTWs in the area, and that the final monitoring requirements are appropriate for the discharge.

5-10 – Temperature: The Tribe doesn't appear to have provided any data suggesting that its proposed discharges would comply with temperature limitations, and neither the proposed statement of basis nor proposed permit offer any valuation of this issue. Given the importance of water temperature to the Russian river and the protected species within it, the USEPA should not issue any NPDES permit without analyzing the proposed discharge's likely temperature impacts.
RESPONSE: The proposed and final permit contain effluent limits for temperature as specified in the Basin Plan for the receiving water (see Part I.D 10). Additionally, the permit prohibits the discharge of effluent to the Russian River during the dry season as specified in the Basin Plan, which is largely to protect the temperature regime of the Russian River during sensitive times. During the wet season, the volume of effluent expected to discharge (less than 0.150 mgd) as compared to the flow of the Russian River (> 150 mgd) is insignificant (less than 0.001 % of flow) and will not adversely affect the temperature of the Russian River.

5-11 - Quality Assurance (QA) Manual or Plan.
The proposed permit would require the Tribe to develop a QA Manual or Plan that would, among other things, identify the roles and responsibilities of the participants, explain the Tribe's intended sample collection procedures and similar information, identify the laboratory that would analyze the samples, and discuss how the Tribe would perform data review and meet the USEPA's reporting and laboratory certification requirements. (Permit at 13-14.) None of this information depends on issuance of the proposed permit, and the Tribe could prepare the require manual or plan now, and allow public review of its contents. The USEPA should require the Tribe to do so, and circulate the draft QA Manual or Plan for public review and comment before taking any action on the permit
RESPONSE: The proposed and final permit contains requirements for the Tribe to develop a QA manual to ensure that sample collection procedures meet the requirements of the Clean Water Act. The sample collection requirements are specified in Part III of the permit and in 40 CFR Part 134. This is a standard component of NPDES permits and is required to be maintained by the Tribe. EPA does not believe it necessary for this to be completed prior to issuance of the permit because this information is not needed by EPA to write the permit properly.

5-12 - Operation, Maintenance, and Emergency Response.
The County has repeatedly requested that the USEPA require the Tribe to designate and identify independent persons or entities to operate and maintain the wastewater treatment plant and disposal facilities. The proposed statement of basis and proposed permit again do not identify any such persons or entities, nor provide any assurance that they will be independent, and on site or available to respond to emergency conditions.

The only information in this regard in the September 7 public hearing, when one of the Tribe's consultants obliquely referred to an alarm system, remote viewing of the plant, and a protocol for notifying concerned parties when violations occur. The proposed permit and proposed statement of basis should be revised to disclose this

information in far greater detail, and to provide an analysis by USEPA staff regarding the feasibility and efficacy of the Tribe's operation, maintenance, and emergency response plans. The USEPA should specifically require that the Tribe immediately report all water quality violations to the Regional Water Quality Control Board, the County, and all other interested State and local entities.

The USEPA may object that this information (or other information identified above) is beyond the usual purview of an NPDES permit. The County and Water respectfully refer the USEPA to page 19 of its proposed statement of basis, which reveals that although the Tribe is not required to comply with State criteria for wastewater reuse on Tribal lands, USEPA staff successfully negotiated with the Tribe on this point, and inserted permit terms requiring compliance. The County and Water Agency respectfully request the USEPA to do the same with regard to the information identified above, and include permit terms establishing standards for the same.

RESPONSE: The proposed and final permit include several requirements to properly maintain the facility, to have trained personnel operate the facility, and for prompt notification of EPA and the Regional Water Quality Control Board personnel in case of upsets. In addition to permitting and frequent effluent monitoring requirements, EPA inspectors will continue to perform inspections of the plant to evaluate proper operation and maintenance. The designation and selection of a plant operator, whether an independent contractor or a Tribal member, is at the discretion of the Tribe and it is not a requirement of this permit nor is it within the purview of EPA or the public to dictate Tribal personnel. EPA's requirement in the permit is 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. (Sections II.D, III.G, and Standard Conditions 5 and 6 of the permit). EPA believes these conditions are sufficient to ensure that a qualified operator with the proper training be required to run the plant.

EPA therefore believes that the permit adequately addresses requirements for operation and maintenance and operator training.

5-13 – The County and Water Agency respectfully request that USEPA require all future operators to be independent third parties, rather than Tribal employees themselves.

RESPONSE: EPA does not see a reason to require treatment operators to not be tribal employees. See response to 5-12.

5-14 - Table 1 and 2 use the word "composite" but do not define the type of composite sample required (8-hr or 24 hr). EPA should require 24 hour flow proportional samples, should require sampling at least 1 weekend per month due to higher flows, and should require weekly samples be taken on different days.

RESPONSE: EPA has changed the permit to specify that the composite samples be 24-hour composites. EPA does not believe additional restrictions on monitoring requirements are necessary to ensure proper treatment performance.

5-15 – The permit should mandate an arrangement that will ensure 24 hours per day/7 days per week responsiveness by individuals who are in immediate proximity to the site and by who have proper training and experience.
RESPONSE: The permit requires that the operator be suitably qualified to operate a wastewater treatment plant. The permit requires that effluent limits and proper Operation and Maintenance be continuously met to ensure compliance with water quality standards and effluent limits. (Sections II.D, III.G, and Standard Conditions 5 and 6 of the permit).

5-16 – The permit should require full compliance with Title 22 as is required for all other California permittees. Additionally, requirements for tail water recovery or control should be included in the permit to provide physical facilities to ensure that uncontrolled runoff does not occur.
RESPONSE: As described in the Statement of Basis, the Tribe has decided to comply with Title 22 standards. As a sovereign entity, the Tribe is not bound by California's Title 22 standards. However, these standards have been included in the permit and are therefore mandatory. The permit prohibits reclaimed water from entering waterways or causing ponding or public nuisance hazards, and contains conditions to protect public health. EPA does not believe it is necessary that the permit require physical barriers around irrigated areas to ensure compliance.

5-17 - The language that would allow the one percent limit to be evaluated on a monthly average should be deleted. (page 3, footnote 1 of permit)
RESPONSE: EPA has not revised the language. EPA believes the language is appropriate, and is consistent with the language used by the North Coast Regional Water Quality Control Board to implement the Basin Plan.

5-18 – Monthly average BOD and TSS limits should be 10 mg/l rather than 30 mg/l to allow compliance with Title 22 requirements. (Table 2, p4)
RESPONSE: EPA agrees that all discharges should meet Title 22 requirements for BOD and TSS and has made the change in the permit.

5-19 - Receiving water monitoring should be performed prior to 9 am to detect critical conditions; the phrase "when feasible" should be deleted.
REPSONSE: EPA has made the suggested changes in the permit.

5-20 - Language should be added to receiving water limitations to clarify the discharger's responsibility in determining causation for violations of receiving water limitations.
RESPONSE: EPA does not believe this is necessary. Compliance points are 100 feet upstream and downstream of the discharge: it is unlikely that violations of receiving water limitations will have other causes.

5-21 - Capacity attainment and planning. The permittee should be required to report within 30 days (instead of 90) when average dry weather flow exceeds 75% (rather than 90%) of the rated capacity of the treatment system. This notification is needed to ensure that adequate capacity will be provided

RESPONSE: EPA typically includes reporting requirement within 90 days when 90% of capacity is reached. EPA believes this is an appropriate level of notification to ensure proper treatment and adequate capacity.

5-22 - Daily discharge records should be required and records should be available to the public. If for example there are no daily records available how will it be determined if sheet flow was caused by discharge or rainfall event?
RESPONSE: The permit requires daily discharge records. Additionally, the "surface water discharge operations plan and report" will document these daily records of flows. These reports are publicly available and may be requested from EPA.

5-23 - There is a larger danger to the vineyards and the Russian River through private septic systems in this county that are failing. And this type of system proposed by Tribe is treated and the way it's done has been proven to be safe.
RESPONSE: EPA agrees the wastewater from the Tribe will be treated to a high level prior to discharge.

5-24 - The level of treatment will meet or exceed the quality of effluent produced by the City of Windsor and the City of Healdsburg. The effluent will be of drinkable quality.
Response: EPA agrees the wastewater from the Tribe will be treated to a high level prior to discharge and is designed to meet all water quality criteria.

5-25 - What happens to the solids and how is that dealt with?
RESPONSE: As described in the Statement of Basis, "biosolids," or sludge generated from the wastewater treatment plant, will be disposed of off-site. The permit contains requirements to meet federal requirements at 40 CFR Parts 503, 258, or 257 as contained in Section V of the permit.

6 - DISCHARGE TO STREAM A1 - Concerns about discharge to Stream A1

6-1 - Discharge to A1 is inconsistent with Basin Plan
The Regional Water Quality Control Board "is concerned that discharges to the watercourse identified as stream A1 are in direct conflict with our Basin Plan prohibitions. The Implementation chapter of the Basin Plan contains point source discharge prohibitions for all freshwater watercourses within the Region. In general, the prohibitions can be grouped into three categories:

- **Prohibition or seasonal prohibition on discharges to major rivers and their tributaries.**
- **Prohibition on discharges to coastal streams and natural drainage ways that flow directly to the ocean.**
- **Prohibition on discharges to surface freshwater impoundments and their tributaries.**

The proposed permit describes stream A1 as not being a tributary to the Russian River. Therefore, this watercourse is considered to be a freshwater impoundment

and/or tributary to a freshwater impoundment and discharges of treated wastewater should be prohibited. The permit as written would allow year-round discharges into stream A1, even when there is no flow in the receiving water. The stream would flow off of tribal lands until ultimately pooling in the channel and infiltrating into the ground. It has been reported that this stream periodically floods onto downstream agricultural lands. Wastewater discharges to this isolated stream would result in the accumulation of pollutants over time. Summer discharges would collect in the channel and may result in nuisance algal blooms and mosquito habitat. We request that the permit be rewritten to ensure full compliance with the Basin Plan."
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-2 - In the Statement of Basis, EPA concludes that the proposed discharge would meet all 5 of the criteria required for an exception to the one percent of flow limitation of the Russian River, although EPA did not propose to allow the exception. The language in the Statement of Basis should be removed if the exception is not being granted.
RESPONSE: EPA has deleted this language.

6-3 - Issues of Sheetflow. Notwithstanding that the permit expressly and quite properly prohibits any sheet flows from either Stream P1 or A1 to surrounding property, the Tribe itself has acknowledged in earlier findings with the federal government that sheet flow is the usual and invariable outcome of waters transported through Stream A1. We call EPA's attention to the "Dry Creek Rancheria Fee to Trust Project Final Environmental Assessment" dated August 2005, which was prepared by the Tribe's environmental consultations, ESA, for the US Department of Interior's Bureau of Indian Affairs. In that FEIS, a "wetland delineation report," included at Appendix C, discusses at some length the characteristics of Stream A1. Of particular interest here is Figure 4-2, which depicts very clearly the sheet flow condition that is an inherent characteristic of this watercourse. Figure 4-2 candidly demonstrates that waters reaching its terminus will be discharged by sheet flow to the surrounding vineyards located on private property south and east of Highway 128 to authorize a discharge that almost certainly will result in violations of permit conditions seems nonsensical, especially in the absence of reliable hydrologic evidence that the flows can be managed effectively under all conditions of use to preclude a violation.

If the tribe already has the ditchline at field capacity and an inch of rain falls, all of the resulting runoff then enters the ditch, including the parking structure area runoff will sheet flow into the vineyard. This will interfere with farming practices (you can't farm a mudhole) and under the right circumstances could cause disease or death of vines.
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-4 - The parcel west and north of tribe encompasses almost all of the stream channel described as A1 as well as the land over which approximately 400 feet of drainage of effluent would flow pursuant to the proposed permit. There isn't a channel that starts on the Tribe's property. There is a swale that picks up runoff stormwater from a small hill on the tribe's property line to the south. The treated effluent will run across private property until it makes its way into the streambed.
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-5 – The steep sloped property is highly susceptible to erosion and has also had recent landslide activity. These conditions would be aggravated by the proposed permitting of drainage across private property.
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-6 - The A1 discharge does not start on the Rancheria
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-7 - A1 flows directly onto private land and not into the Russian River. How can this be a Water of the U.S. ?
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-8 – There is no definition of sheet flow included in the permit. Sheet flow typically means thin, shallow, slow moving flow over land.
RESPONSE The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-9 - The permit falls short of requiring the land to be dry and no moisture escaping beyond the terminus of the ditch line. It is possible for sheet flow not to occur, and still have the ground saturated from underflow through the gravel in the bottom of the ditch. Compliance would be met, a mud hole would exist, and the property owner would have no recourse.
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-10 - The Statement of Basis states that the U.S. Army Corps of Engineers has determined that Stream A1 is hydrologically isolated from all navigable waters of the United States. (SOB at 3.) The USEPA should provide some citation or documentation of that statement. Did this determination include consideration of the effects of proposed effluent discharge volumes? Did the determination consider extreme wet weather rainfall and runoff conditions?
RESPONSE: The letter from the Army Corps of Engineers is included in the appendix to this document. The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

6-11 – The analysis of antidegredation presented in the statement of basis is cursory in nature and does not include analysis of the increased pollutant loadings or incremental water quality changes that will occur as a result of the proposed discharge. Documentation (including assumption and calculations supporting water quality impacts analysis) should be provided for public review prior to the adoption of the proposed permit.

RESPONSE: As described in the Statement of Basis, 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 will be discharged below detection levels. Only aluminum, nickel, zinc and chloroform were detected in the effluent, and all of these pollutants were detected at levels below water quality standards. Therefore, due to the low levels of toxic pollutants present in the effluent, it is not expected that the discharge will adversely affect receiving water bodies.

During the wet season, wastewater effluent will be discharged to Stream P1 which then flows to the Russian River. The volume of effluent expected to be discharged (less than 0.150 mgd) as compared to the flow of the Russian River (> 150 mgd) is less than 0.001% of the flow of the Russian River. Therefore, it is not expected that the discharge will adversely affect the Russian River.

EPA conducted an informal consultation with the National Oceanic and Atmospheric Adminstration's National Marine Fisheries Services (NMFS) to evaluate the potential effects of the discharge on species listed as endangered or threatened and critical habitat. In a letter dated July 25, 2006, NMFS concurred with EPA's assessment that the issuance of the permit is not likely to adversely affect listed species and their critical habitats.

During the dry season, no wastewater will be discharged to the Russian River or to Stream P1 and therefore these waterbodies will not be affected during sensitive periods of the year.

Due to the very high level of treatment achieved, the absence of toxic pollutants, and the low or zero volumes of wastewater discharged during critical periods, EPA has concluded that there will be no degradation of water quality.

6-12 - Both oak trees and grape vines do not like "wet feet" (saturated soil) during the summer. If stress of oak root fungus is found in the oak trees or vines from the additional discharge in the A1 P1 basin, will it be considered a nuisance requiring the reduction in flows discharged into the basin?

RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

7 – STREAM P1 - Concerns about discharge to Stream P1:

7-1 - P1 cannot physically accommodate the anticipated discharge, resulting in significant stream bank erosion and other environmental impacts. There is no information in the permit about potential erosion effects.

REPONSE: Though no detailed cross-section of Stream P1 was immediately available, the Tribe estimated the conveyance capacity of Stream P1 for the reach immediately west

of Highway 128. This reach was estimated to have the lowest capacity of any portion of Stream P1, since it is relatively flat and other areas have steeper slopes. Upstream reaches have significant slope, which greatly increase their capacity.

Available topographic surveys show that west of Highway 128, Stream P1 has a width of approximately 20 feet from top of left bank to the top of right bank. Based on an assumed 2:1 slope from each bank, and a water depth of approximately 3 feet (with greater than 2 feet of freeboard), the calculated conveyance capacity of Stream P1 is approximately 37 MGD, or 58 cfs. These calculations were based on the Manning equations for open channel flow of a stream with fair to significant vegetation ($Q=1.49/n)*AR^{(2/3)}S^{(1/2)}$. The treatment capacity is approximately 0.15 MGD, or .23 cfs, or less than 1% of the calculated capacity of the Stream P1.

The Tribe determined from USGS topographic mapping that Stream P1 drains a watershed area of approximately 369 acres. Based on historical precipitation rates for a watershed area of this size, flows in Stream P1 frequently peak over 1 MGD.

Based on the existing cross-section of Stream P1, the existing watershed area, and historic precipitation rates, it is not expected that a new discharge with a maximum peak flow of up to 0.20 MGD would significantly effect the potential for stream bank erosion or in any way limit the existing conveyance capacity of Stream P1.

7-2 - P1 does not run water year round so the wastewater cannot reach the Russian River. It will end up leaching into the soil and into the groundwater of private property owners. Who will be inspecting the wells and soil affected by the wastewater discharge ? Some wells on the East of the Alexander valley have been high in boron concentration, which can accumulate in the soil and over time have lethal effects for grapevines.

REPSONSE: The discharge to stream P1 will be a primary source of groundwater replenishment. The permit has established both MUN and GWR as a beneficial use as specified in the Basin Plan. The permit establishes effluent limits and standards to ensure compliance with the MUN 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 groundwater recharge and municipal drinking water supply.

Regarding boron concerns, the Tribe has collected boron concentrations for their existing groundwater wells. No wastewater effluent boron samples have been collected. This data is summarized below:

Well 2000-1 = 0.59 mg/L – data collected on 04/07/2000
Well 2000-3 = <0.1 mg/L – data collected on 04/11/2000

It is not expected that the effluent discharge will have a direct impact on the soils where grapevines are growing and boron is not anticipated to reach levels that will affect agricultural crops. See response to comment 6-12.

7-3 - Discharge limits based on 1% of the Russian River is a significant volume of water and significantly greater than the POTW treatment capability.
RESPONSE: Due to language of the Basin Plan, the 1% flow restriction is included in the permit. However, the permit also contains limits on the mass of pollutants that can be discharged. This is essentially a limit on flow as well, and will be a much tighter constraint on flow than the 1% restriction.

8 - PRIVATE PROPERTY CONCERNS:
8-1 - It is simply wrong on its face for one entity to be able to use the private property of others for an open discharge channel.
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 takes the position that when a watercourse crosses private property it is inappropriate for a discharge to be authorized in that watercourse. The Clean Water Act does not authorize EPA to use this criterion for granting or denying NPDES permits. *See* 33 U.S.C. § 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.

8-2 - ...as sovereign nation, this applicant *is* different. While your attorneys have expressed confidence that private citizens have legal recourse against any NPDES permit holder, there are probably an equal number of attorneys who believe just as firmly that tribal sovereignty is a shield against private suits. Since this is unsettled, the best way to protect the interests of both the tribe and neighboring land owners would be to make sure the permit is as comprehensive as possible. It is far better to anticipate problems and build in solution than to rely after the fact on a legal remedy that may not exist.
RESPONSE: EPA agrees that the permit must be as comprehensive as possible in order to protect water quality and beneficial uses of the receiving waters, which include drinking water supply, agricultural supply, and groundwater recharge uses. EPA has established permit effluent limitations and standards that protect these uses under the authority of the Clean Water Act. EPA agrees with the commenter that all necessary precautions to prevent the contamination of water supplies or that would negatively affect water resources should be included in the final NPDES permit.

8-3 - Sheet flow would be considered a trespass unto private land.
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.
See response to comment 8-1.

8-4 - The Tribe does not have an easement with property owners to carry effluent across their land on the southern property line to get to the streambed on the other side of the property.

RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. To the extent this comment concerns discharges to Stream A1, the comment is no longer germane.

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 suggests that a discharge to a watercourse crossing private property should not be authorized unless the discharger has an easement. The Clean Water Act does not authorize EPA to use this criterion for granting or denying NPDES permits. 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.

EPA does not take a position as to whether private citizens have legal recourse against the tribe in this case. *See* 33 U.S.C. § 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).

8-5 - Who will be held liable for damages to drinking water wells, agricultural wells, and soils ?

RESPONSE: The permit has established both MUN and GWR as a beneficial use as specified in the Basin Plan. The permit establishes effluent limits and standards to ensure compliance with the MUN 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 groundwater recharge and municipal drinking water supply. Any violation of the permits' effluent limitations and standards would be subject to enforcement under the CWA.

Under the CWA, EPA has significant enforcement authority, as discussed in response to Comment 11-3 below. Additionally, CWA § 505 allows citizens affected by a discharge to file civil suits in federal court.

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

8-6 - Receiving water limitations list 10 restrictions and uses such terms as "adversely affect" or "nuisance" but provides no definitions or measurable limitations, all are purely subjective. It is my opinion that any water discharged into A1 will create a "nuisance" (habitat for bluegreen sharpshooters vectoring Pierce's disease, a deadly threat to vineyards, along HWY 128), and that accelerated and increased sheet flow from rainfall events will "adversely affect" farming practices on our property. Directly affecting our ability to grow or sell our product

which will affect us economically. This means that the Casino will benefit economically from this permit at our expense. If this permit is issued these two examples will no doubt be raised at some time in the future, how would EPA proposed to mitigate this problems today?
RESPONSE: The permitee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

9 - INSUFFICIENT DATA Concerns about insufficient data to adequately evaluate the permit application

9-1 - 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.
RESPONSE: See response to Comment 7-1 for the capacity of Stream P1.

9-2 - No percolation or evaporation studies were provided that demonstrate that the discharge from the channels would not impact the existing private lands
RESPONSE: Per the Basin Plan, the receiving water is designated as a drinking water source. Therefore, the discharge will meet all effluent limitations and standards necessary to protect the designated use 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 the drinking water designated use, and will therefore protect water quality in private wells.

9-3 - 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: Per the Basin Plan, the receiving water is designated as a drinking water source. Therefore, the discharge will meet all effluent limitations and standards necessary to protect the designated use 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 the drinking water designated use, and will therefore protect water quality in private wells.

EPA believes that monitoring should be conducted at the point of discharge from the treatment system. This ensures that the discharge is meeting all water quality standards necessary to protect downstream uses, including wellwater, without allowing for dilution and without potential contamination from other sources. EPA does not believe that monitoring of wells is necessary.

9-4 - A complete "water balance" analysis has not been provided. There is a "pressing need for some evidence that the Tribe's proposed disposal and storage scheme is actually feasible as a matter of fact. Neither the proposed statement of basis nor the proposed permit include a water balance or other information demonstrating that the Tribe's surface discharges, storage areas, and spray fields could actually accommodate the proposed 300 percent increase in treated

wastewater." It is not at all clear whether the proposed effluent disposal/storage scheme is feasible to surface waters, the limited land area for effluent disposal and the uncertainties described in the proposed permit.

RESPONSE: The Tribe has prepared a water balance to respond to comments which is included in the Appendix to the comment response document and is summarized below (Technical memorandum, 12/22/06): "This water balance provided a water supply strategy for two different flow situations. One at the current flow rate that averages 28,000 gpd, the other at a projected flow rate of 120,000 gpd. The higher flow rate was selected based on it being a relatively high average daily flow rate. Since the facilities required to store/treat/discharge 120,000 gpd are greater than the current average daily flow rate of 28,000 gpd, those facilities are described below.

If 120,000 gpd of wastewater is generated every day, approximately 134 AFY of effluent is produced. This effluent would be discharged as follows:

Toilets/urinals: Approximately 15,000 gpd would be recycled year round, which is equivalent to 16.8 AFY (12.5% of total volume). Available recycled water is first used for toilet and urinal flushing on-site.

Irrigation: Irrigation of up to twelve acres of tribal lands (including spray fields, landscaped areas, etc.) would be at agronomic rates as defined by the local (Healdsburg) CIMIS weather station. Based on these agronomic rates, irrigation water is only required between March and October. During other months, the average precipitation rate is higher than the evapotranspiration (ET) rates. Thus, plants do not have a demand for excess water during these times. Based on an annual ET rate of 53.52 inches per year, the total annual volume of water used for irrigation of Tribal lands is equal to 50.15 AFY (37.3%). All remaining recycled water (following the usage for toilets/urinals) is used for irrigation of Tribal lands.

Stream P1: Discharge to Stream P1 would only occur after the toilet/urinal and on-site irrigation demands are satisfied. Additionally, discharge to Stream P1 is limited to the time period between October 1 and May 14, and flow limited as specified in the permit. Since wintertime irrigation demands are relatively low, effluent generated during these times is reused on-site for toilet/urinal flushing, or discharged to Stream P1. The total volume discharged to Stream P1 is 67.48 AFY (50.2%). Additionally, during the end of the summer, when irrigation demands decrease due to lower ET rates, and discharge to Stream P1 is not allowed, some effluent would be seasonally stored on-site. Based on these calculations, up to 3.14 AF will need to be stored during August and September. This stored volume of water would be detained in on-site recycled water storage tanks or ponds until discharge to Stream P1 is allowed. During the allowable discharge period, Stream P1 flows would be slightly higher than the daily effluent flows, as the on-site storage facilities are drained. However, flows to Stream P1 would still remain within the flow limitations identified in the NPDES permit."

9-5 – AVA believes a comprehensive stormwater management plan should be required by EPA for new construction and the entire Rancheria either under this permit or a separate permit.

RESPONSE: Any construction on the Rancheria disturbing greater than 1 acre will require coverage under EPA's stormwater construction general permit. As a Publicly Owned Treatment Works (POTW) with a design flow of less then 1 mgd, the POTW area is not required to obtain coverage under EPA's multisector industrial general permit. This permit does not allow for the discharge of stormwater associated with either construction activity or industrial activity, and the Tribe would need to obtain a separate permit (and prepare a stormwater management plant) for such activities.

9-6 - Concerns that pharmaceutical contamination will be present in discharge and will affect groundwater. Monitoring by the Southern Nevada Water Authority of Lake Mead found small amounts of 20 pharmaceuticals in the lake. 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.

RESPONSE: The permit reflects all applicable water quality standards contained in the Basin Plan. The Basin Plan does not contain any standards for pharmaceuticals.

EPA agrees 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. As noted by the commenter, chemicals related to pharmaceuticals and consumer product residuals have been found in many waterbodies. As noted in the Statement of Basis, EPA believes that the presence of these chemicals in the Dry Creek Rancheria discharge may be less than a typical POTW because the facility is not servicing households; however this is a presumption due to facility wastewater generation and EPA does not have data on this issue.

In accordance with Section 304(a) of the Clean Water Act, EPA issues guidance to States on new or revised water quality criteria. EPA, however, has not established guidance on criteria specific to pharmaceuticals, and EPA is not aware of any State or Tribe that has adapted water quality standards for pharmaceuticals, nor any NPDES permit that contains effluent limits for pharmaceuticals. EPA is aware of permits for POTWs that have established pollution prevention programs to encourage proper disposal of unused medicines and household hazardous wastes so that they do not get flushed down the sink/toilet and discharged to the POTW. However, due to the lack of households discharging to the Dry Creek wastewater treatment plant, EPA does not believe such pollution prevention measures are necessary for this permit.

10 – CASINO EXPANSION CONCERNS

10-1 - "Issuance of the proposed permit would remove the last physical and legal restraint on no-gaming development of the Rancheria, and would thus allow the Tribe to approximately triple the size and scope of its operations. This would allow a major new hotel and resort."

RESPONSE: The issuance of the NPDES permit under the Clean Water Act regulates the discharge of a pollutant through a point source to a water of the U.S. The issuance of a permit does not convey nor deny the permittees' right to develop property.

11 - ENFORCEMENT CONCERNS

11-1 - The Regional Board requests direct notification in the event of any accidental spill or a discharge of effluent that would result in a risk to public health.
RESPONSE: EPA has added this notification requirement to the permit.

11-2 - "...our experience with the Tribe's Casino enterprise is that even a very carefully conditioned permit poses substantial risks to persons, properties, and resources off-site because the Tribe has shown from past experience it is unlikely to rigorously observe the Permit requirements" the Tribe has undertaken and is likely to continue, activities and practices on-site that are conducive to non-compliance.
RESPONSE: The commenter has not provided any evidence of their claims that the Tribe does not observe permit requirements. Based on observation of on-site treatment operations, EPA inspections, and data provided by the Tribe, EPA has no reason to believe that the Tribe will not be able to fully meet permit requirements. In the event that non-compliance is observed, EPA may pursue civil and/or criminal enforcement penalties, and may withdraw a NPDES permit.

11-3 - What policies will EPA enforce to ensure compliance if the Rancheria 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. § 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. § 309(c). Any wrongful introduction of materials into a treatment plant in violation of the toxic and pretreatment effluent standards of § 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. §§ 309(c), (d), (g).

11-4 - EPA should defer to the Regional Board for oversight and compliance enforcement because they are closer, likely have more resources than EPA, and are familiar with the site. There is concern that EPA is not adequately staffed to maintain appropriate levels of inspection and monitoring.
RESPONSE: EPA encourages the Tribe to work cooperatively with the Regional Board on issues of compliance and enforcement. EPA understands that the Tribe has invited Regional Board staff to inspect the facility in the past, and would like to encourage the Tribe to maintain a good relationship with the Regional Board. However, EPA is issuing the permit to the Tribe and cannot delegate the responsibility of the permit to the State. EPA will therefore remain the regulatory authority for the NPDES permit. EPA assures that commenter that it will adequately inspect and monitor the facility.

12 – Adaptive Management Plan / capacity of A1

12-1 - The Adaptive Management Plan and Surface Water Discharge Operations Plan appear insufficient to ensure that the proposed discharge would function as intended and not cause sheet flow. These plans should be fully developed and shared with the public prior to issuance of the NPDES permit. These plans must be consistent with each other and with the effluent water balance to ensure that the proposed discharge is properly managed. The notion that this plan should be developed "on the fly", after adoption of the permit and during actual discharge events is an unusual and unnecessary approach. Typically, operations plans are developed in concert with facilities design and well in advance of the adoption of permits. Such prior adoption is even more appropriate in this case, since the proposal is for a new surface water discharge.

RESPONSE: The permittee has decided to withdraw the application to discharge to Stream A1. Therefore, the comment is no longer germane.

Due to the removal of A1 as a permitted discharge point, EPA has removed the requirement for the permittee to complete an Adaptive Management Plan that would ensure compliance with the discharge prohibitions contained in the proposed A1 discharge.

12-2 - Defoliation of the site for development already has and undoubtedly will continue to exacerbate the Tribe's ability to dispose of wastewater without imposing ever increasing impacts on its neighbors.

RESPONSE: The requirements of the permit are independent of factors such as defoliation. Permit condition Part II. A in the proposed and final permit requires that the Tribe design, install, and maintain erosion protection measures.

13 - EPA received a comment from "Stand Up For California" (SUFC), an organization that focuses on gambling issues that affect California. In their comments, SUFC questions EPA's jurisdiction to issue an NPDES permit to the Tribe. While the commenter "acknowledge[s] that EPA generally has jurisdiction over the issuance of NPDES permits <u>in Indian Country</u>" (emphasis in original), the commenter argues that the Dry Creek Rancheria land does not meet the definition of "Indian Country," and therefore questions whether EPA has the authority to issue an NPDES permit to the Tribe. Specifically, the commenter argues that the land is not "Indian country" because it is not: (1) a reservation; (2) an allotment; nor (3) a dependent Indian community.

[See Commenter 006: "Stand Up for California" for a full discussion of argument]

RESPONSE: EPA has jurisdiction to issue this NPDES permit for the Dry Creek Rancheria because the Rancheria is a "reservation."

As acknowledged by the commenter, EPA generally is the permitting authority in "Indian country" for tribes who have not assumed authority to administer the NPDES program. 40 C.F.R. § 122.31(c). "Indian country" is defined as: "(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (2) All dependent Indian communities with (sic) the

borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 40 C.F.R. § 122.2. This definition parallels the definition of "Indian country" found at 18 U.S.C. § 1151. Consistent with federal Indian law, EPA considers trust land formally set aside for the use of Indians to be "within a reservation" whether or not it has been formally designated as a "reservation." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (U.S. 1991) (citing *United States v. John*, 437 U.S. 634 (1978) and *United States v. McGowan*, 302 U.S. 535, 539 (1938)).

The Dry Creek Rancheria land was conveyed to the United States on June 1, 1915. The land was purchased pursuant to the Indian Appropriation Act of August 1, 1914, which provided "[f]or the purchase of lands for the homeless Indians of California, including improvements thereon, for the use and occupancy of said Indians ...." Additionally, courts have found that rancherias are the equivalent of reservations and have treated them as such. See, *City of Roseville v. Norton*,348 F.3d 1020 (D.C.Cir.2003); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 657 (9th Cir. 1975). Accordingly, the Rancheria is a "reservation," the Tribe has not applied for and therefore has not assumed authority to administer the NPDES program, and EPA has the authority to issue an NPDES permit to the Tribe.

* The tribe's legal analysis of this comment is provided for reference. The opinions expressed in that letter are the views of the tribe and do not necessarily reflect the views of EPA.