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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

In re: Chukchansi Gold Resort
and Casino Wastewater
Treatment Plant

NPDES Permit No. CA 0004009

NPDES Appeal Nos. 08-02, 08-03,
08-04, 08-05

**EPA Region IX's Response to
Petitions for Review**

Region IX of the United States Environmental Protection Agency ("Region") submits the following response to the Petitions for Review of NPDES Permit No. CA 0004009 ("Final Permit" or "Permit") filed by Caroline A. Rodely (NPDES 08-02) ("Petitioner Rodely"); Alan E. Rodely (NPDES 08-03), on behalf of the Downstreamers ("Downstreamers" or "Petitioner Downstreamers"); Michael A. Campos (NPDES 09-04), Attorney, Stoel Rives LLP, on behalf of Madera Irrigation District ("MID" or "Petitioner MID"); and Jo Anne Kipps (NPDES 08-05) ("Petitioner Kipps") (collectively, the "Petitions" or "Petitioners"). The Final Permit authorizes the Picayune Rancheria of the Chukchansi Indian Community ("Permittee" or "Tribe") to discharge treated wastewater from the Chukchansi Gold Resort and Casino wastewater treatment plant ("WWTP" or "Facility"), located in Madera County, California, to an unnamed creek which flows into Coarsegold Creek, a tributary to the Fresno and San Joaquin Rivers under the National Pollutant Discharge Elimination System ("NPDES").

The specific assertions made by Petitioners are not always clear. Petitioner Rodely appears to argue that the Region erred by: 1) authorizing the Permittee to discharge treated wastewater effluent into a water body that is “dry up to five months of the year and any discharge during that time will change the ecology of the water body”; (2) failing to prepare an “E.I.R.”; and (3) failing adequately to consider impacts on species. Petitioner Downstreamers appears to argue that: (1) the permit is defective because the Facility may malfunction and therefore cause pollution; (2) a discharge should not be allowed by the Permit because the receiving water is dry during part of the year; and (3) EPA failed to specify adequately which provisions of the draft permit had been changed in the final permit and, if changed, the reason for any such change. Petitioner Kipps: (1) disagrees with the frequency of monitoring for total coliform organisms (TCO) and turbidity required in the permit; (2) alleges that the Region committed procedural error by failing to include an appendix to the Response to Comments she received with her notice of the Region’s final permit decision; and (3) questions the Region’s reasonable potential analysis of and the Permit’s failure to include effluent limitations for Trihalomethanes (THM) as a priority pollutant with a potential to exceed water quality standards.

Finally, Petitioner MID argues the following: (1) the permit is deficient because it lacks a numeric effluent limitation for phosphorus; (2) the permit includes “insufficient investigation and monitoring requirements based on unknown flows and effects of phosphorus of unknown concentration in the discharge on the beneficial uses of the receiving waters”; and (3) the potential effects of the effluent authorized by the permit on organic farmers and other downstream users pose important policy considerations and therefore request that the Environmental Appeals Board (“EAB” or “Board”) exercise its discretion to review the contents of the Permit.

For the reasons stated herein, the EAB should deny the Petitions, because Petitioners have not satisfied the requirements of 40 C.F.R. § 124.19 for obtaining review.

I. Factual and Statutory Background

A. Background

The Picayune Rancheria of the Chukchansi Indian Community is located in Madera County, California near the City of Coarsegold.¹ The approximately 49-acre Rancheria is within the north half of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian on the Picayune Rancheria.² The Tribe operates the Chukchansi Gold Resort and Casino on the Rancheria. To serve the casino, the Tribe constructed a WWTP in 2003.³ Because the Tribe has been land-applying (through landscape irrigation or spray-field irrigation) or reusing (e.g., through toilet flushing) all of its treated wastewater effluent,⁴ it has not been required to secure an NPDES permit for its current operations.

B. Permit Application, Review, and Proposal

In contemplation of expanding its casino, the Tribe applied to the Region on January 20, 2006, for an NPDES permit to discharge treated wastewater to surface waters.⁵

The Clean Water Act (“CWA”) generally prohibits the discharge of pollutants to waters of the United States without an NPDES permit. CWA §§ 301, 402; 33 U.S.C. §§ 1311, 1342. NPDES permits are the mechanism used to implement technology-based and

¹ Administrative Record (“AR”) at 37 (Final Fact Sheet at 1).

² AR at 300 (Final On-Reservation Environmental Evaluation at 1).

³ AR at 37 (Final Fact Sheet at 1). Its average daily flow rate was 104,000 gpd in 2006. Id.

⁴ AR at 38 (Final Fact Sheet at 2).

The term “land application” includes use of irrigation and sprayfields.

⁵ AR at 258 (Chukchansi NPDES Permit Application, EPA Form 3510-1 at 2).
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water quality-based effluent limits and other CWA requirements, including monitoring and reporting. A permitting agency may not issue an NPDES permit “[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.” 40 C.F.R. § 122.4(d). Applicable requirements include limitations necessary to achieve water quality standards (“WQS”) established by States and approved by EPA pursuant to CWA § 303, 33 U.S.C. § 1313, including narrative criteria for water quality.⁶ See 40 C.F.R. § 122.44(d)(1). EPA’s authority is limited to ensuring that the permit meets CWA requirements. See NRDC v. EPA, 859 F.2d 156, 169-70 (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).

The Region issued the Permit to the Tribe pursuant to 40 C.F.R. § 123.1(h), which provides that EPA shall administer the NPDES program on “Indian lands if a State (or Indian Tribe) does not seek or have authority to regulate activities on Indian lands.”⁷ The Facility is located on “Indian lands” for purposes of 40 C.F.R. § 123.1(h), because the Facility is located within an Indian reservation.⁸

The Tribe does not currently have its own water quality standards (“WQS”). In this instance, consistent with 40 C.F.R. §§ 122.4 and 122.44(d), the Region developed water quality-based effluent limitations necessary to achieve the federal water quality standards found in the California Toxics Rule (“CTR”) codified in 40 C.F.R. § 131.38, and

⁶ State certification under CWA § 401(a)(1) that the discharge will meet applicable water quality standards is not relevant to this case, since the discharge does not originate on State lands. 33 U.S.C. § 1341.

⁷ The State of California has not demonstrated that it has authority to regulate NPDES activity on the Picayunc Rancheria of the Chukchansi Indian Community, and EPA has not approved the Tribe to implement the NPDES program.

⁸ AR at 261 (Chukchansi NPDES Permit Application, EPA Form 3510-2A at 3).
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the State of California's federally-approved water quality standards found in the Basin Plan for the Central Valley Regional Water Quality Control Board ("RB5 Basin Plan"), both of which are applicable to waters downstream of tribal boundaries.

The water quality standards found in the RB 5 Basin Plan include use designations and numeric and/or narrative water quality criteria. The applicable water quality standards in the CTR and RB 5 Basin Plan which have been applied in the Permit are those that apply to the Fresno River from Source to Hidden Reservoir and their tributaries. The beneficial uses designated for this surface water body are Municipal (MUN), Agriculture (AGR), Groundwater Resource (GWR), Water Contact Recreation (REC-1), Warm Freshwater Habitat and Cold Freshwater Habitat (FW HABITAT-WARM/COLD), and Wildlife Habitat (WILD).⁹ Applicable narrative water quality standards and numeric water quality standards are described in Section III of the RB5 Basin Plan,¹⁰ and CTR numeric water quality standards are included in 40 C.F.R. § 131.38(b).

The Region reviewed the Tribe's permit application and on September 14, 2006, requested additional information from the Tribe. On September 25, 2006, the Tribe responded in full to the Region's request for additional information.

Prior to proposing a permit for the Facility, the Region contacted the United States Fish and Wildlife Service ("USFWS") to request information from the USFWS regarding the Region's preliminary determination that issuing the Permit would have no effect on listed species or critical habitat under the Endangered Species Act ("ESA"). 15 U.S.C. § 1536 *et seq.* The Region requested and obtained from the USFWS an updated list of listed

⁹ AR at 1773-1774 (RB5 Basin Plan, at II.1.00 - II.2.00).

¹⁰ AR at 1783-1802 (RB5 Basin Plan, Chapter 3).
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species that occur in Madera County, California on September 9, 2007.¹¹ EPA then finalized its review of the available literature and information regarding listed species, and determined that issuing the Permit would have no effect on such species or designated critical habitat.¹²

The Region issued a Proposed Permit on December 22, 2006 (“Proposed Permit”),¹³ and issued a Revised Proposed Permit (“Revised Proposed Permit”) on March 23, 2007.¹⁴ (See discussion of Public Process in Section I.C., below). The WWTP was projected to have a designed maximum flow of 350,000 gallons per day (“gpd”) with a designed average flow of 235,000 gpd.¹⁵ Despite allowing discharges to surface waters, the primary means for disposing of effluent under the Proposed Permit was reuse and land application on-site. The Revised Proposed Permit provides that the Tribe will “minimize the discharge of advanced treated wastewater to surface waters at all times by maximizing recycling and re-use of treated wastewater.”¹⁶ Additionally, standards for re-use of treated wastewater established by the California Department of Health Services (“Title 22”) were

¹¹ AR at 1276-1282 (Species List Cover Letter at 1-2 and Species List at 1-5).

¹² AR at 1271-1275 (Memorandum to Record Re: Review of Information and Literature at 1-5).

¹³ AR at 1017 (Notice of Proposed Action and Proof of Publication (December 22, 2006)).

¹⁴ AR at 1020 (Notice of Proposed Action/Public Hearing and Proof of Publication (March 23, 2007)).

¹⁵ AR at 178 (Draft Fact Sheet at 2).

For context, this flow is typical of a very small WWTP, and EPA would classify it as a minor discharger.

¹⁶ AR at 189 (Revised Proposed Permit at 2); see also AR at 222 (Revised Draft Fact Sheet at 2) (“Wastewater generated by the WWTP will continue to be recycled and re-used on site for toilet flushing and on-site irrigation as much as practicable. Only that volume of wastewater that cannot be recycled or re-used will be discharged.”).

incorporated into the Revised Proposed Permit.¹⁷ Consequently, the Revised Proposed Permit authorized discharge of tertiary-treated effluent that could not be re-used or land-applied to an unnamed creek/wash located just south of the Facility on the Rancheria.¹⁸ The unnamed creek then feeds into Coarsegold Creek, a tributary to the Fresno and San Joaquin Rivers.

Before reaching Coarsegold Creek, the discharge to the unnamed creek flows for approximately one mile, before entering into two interconnected ponds located on Tribal land. The water, if the level is sufficiently high in the ponds, flows out from the second pond via a culvert which flows under Highway 41 and then enters Coarsegold Creek. The water then flows approximately 5 miles in Coarsegold Creek, which is also fed by many other tributaries and streams, before eventually reaching the Fresno River. The Fresno River then flows another 15 miles down to Hensley Lake which forms behind the Hidden Dam. Approximately 30 miles downstream of Hidden Dam, the Fresno River flows into the San Joaquin River.¹⁹

At the eastern edge of Highway 41, about a mile away from the point of discharge, the unnamed creek leaves Tribal land and enters waters under State jurisdiction, for which

¹⁷ AR at 189 (Revised Proposed Permit at 2), AR at 225 (Revised Draft Fact Sheet at 5).

The California Department of Health Services has established statewide reclamation criteria in Chapter 3, Division 4, Title 22, California Code of Regulations (“CCR”), § 60304, *et seq.* (“Title 22”). Title 22 standards are more stringent than applicable federal and federally-approved State WQS. However, the Region incorporated into the permit standards that are consistent with Title 22 to accommodate the proposed design and operation of the Facility to maximize reclamation of treated wastewater.

¹⁸ AR at 189 (Revised Proposed Permit at 2), AR at 222 (Revised Draft Fact Sheet at 2).

As noted above, the Tribe has been reusing and land applying treated wastewater effluent and therefore has not needed an NPDES permit. In the Tribe’s NPDES permit application, operations at and design of the new WWTP contemplated that treated wastewater would continue to be reused and recycled. Only water that exceeds reuse and land treatment capacity will be discharged to surface water under the NPDES permit.

¹⁹ AR at 286 (E-mail from Jack Niblett to Gary Sheth (February 19, 2007)), AR at 291-293 (Topographic Map).

the State of California has established WQS in the RB5 Basin Plan.²⁰ Pursuant to 40 C.F.R. §§ 122.4 and 122.44(d), the Region established effluent limits in the Permit stringent enough to ensure that the CTR codified in 40 C.F.R. § 131.38, and State WQS for the Fresno and San Joaquin Rivers and their tributaries will be met at the point of discharge, i.e. when the effluent enters the unnamed stream on Tribal land. Thus, the Region imposed the requirements in the CTR and the RB5 Basin Plan without any allowance for dilution between the discharge point and the State boundary.²¹

C. Public Process

On or about December 22, 2006, the Region originally published a Notice of Proposed Action in the *Fresno Bee*.²² The Region notified known interested parties, including the County of Madera and the USFWS, of the Proposed Permit.²³ The comment period was scheduled to close on January 21, 2007. However, due to significant public interest in the proposed permit, and changes it had made to the Proposed Permit, the Region decided to re-open the comment period and to hold a public workshop and hearing. Consequently, on or about March 23, 2007, the Region published a Notice of Proposed

²⁰ AR at 286 (E-mail from Jack Niblett to Gary Sheth (February 19, 2007)).

²¹ AR at 153 (Proposed Permit at 2), AR at 178 (Draft Fact Sheet at 2).

²² AR at 1017 (Notice of Proposed Action and Proof of Publication (December 22, 2006)).

²³ See AR at 1018 (E-mail from Gary Sheth, Permitting Officer, EPA Region IX to Interested Parties (January 3, 2007)), AR at 1021-22 (Email from Gary Sheth, EPA Region IX to Interested Parties (March 27, 2007)).

The Draft Fact Sheet listed Permitting Officer Gary Sheth's contact information for members of the public who wished to obtain further information, and the Public Notice explained that the administrative record was available for public review. AR at 187 (Draft Fact Sheet at 11); AR at 1017 (Notice of Proposed Action and Proof of Publication (December 22, 2006)), AR at 1020 (Notice of Proposed Action/Public Hearing and Proof of Publication (March 23, 2007)).

Permit Action in the *Sierra Star*,²⁴ notifying the public of the Revised Proposed Permit, announcing a public workshop and hearing date of April 26, 2007, and extending the comment period to May 8, 2007.²⁵ The Region notified known interested parties, including adjacent land owners, of the Revised Proposed Permit and Public Hearing.²⁶

The Region held a public hearing on April 26, 2007 in Coarsegold, California.²⁷ Approximately 100 people attended the hearing, and the Region received comments from approximately 30 interested parties.²⁸

Following the first public comment period but before re-opening the comment period, the Region made several revisions to the permit that had been originally proposed on December 22, 2006. These changes, which were made largely to address comments received, included the following:

1. Ammonia limits based on pH and Temperature added
2. Coliform limits measured as Total Coliform instead of Fecal Coliform
3. BOD limits lowered from 30 mg/L and 45 mg/L monthly and weekly to 10 mg/L and 15 mg/L respectively.
4. Total Residual Chlorine limits added.
5. Settleable Solids limits added.

²⁴ While the *Sierra Star* has a smaller circulation than the *Fresno Bee*, the Region placed its public notice for the second comment period in the *Sierra Star*, because more of the local community surrounding the Facility receives the *Sierra Star*. See AR at 1685 (E-mail from Jill Yaeger, Madera County Environmental Health Director (February 16, 2007) suggesting the Public Notice be placed in the *Sierra Star*).

²⁵ AR at 1020 (Notice of Proposed Action/Public Hearing and Proof of Publication (March 23, 2007)).

²⁶ AR at 1021-22 (E-mail from Gary Sheth, EPA Region IX, to Interested Parties (March 27, 2007)).

²⁷ AR at 1023 (Informational Fact Sheet provided at Public Hearing).

²⁸ AR at 1083-98 (Comments Received), AR at 1024-1082 (Transcript of Public Hearing).

6. Suspended Solids limits lowered from 30 mg/L and 45 mg/L monthly and weekly to 10 mg/L and 15 mg/L respectively. A daily limit of 20 mg/L added.
7. Electrical conductivity monitoring added
8. Priority Pollutant scan added
9. Environmental Health Director of Madera County added as additional party for 24-Hour reporting of non-compliance.
10. Oil and Grease monitoring specified in the table (was already in permit as a narrative standard).
11. Whole Effluent Toxicity monitoring specified in the table (was already in the permit as a narrative standard).

Accordingly, when the Region re-opened the public comment period on March 23, 2007, it was to take comment on the permit with the changes noted above (“Revised Proposed Permit”).²⁹

D. Final Permit Issuance

The Region made several revisions to the Revised Proposed Permit following the second public comment period that closed on May 8, 2007. The Region added effluent limitations for Copper and Zinc, added ambient monitoring at the edge of the boundary of Tribal Land, added erosion control requirements, added an additional priority pollutant scan, and corrected Designated Uses by removing GR-WARM (migratory fish warm), and adding GWR (Ground water resource). In the Response to Comments document (“Response to Comments”) the Region issued with its final permit decision, the Region

²⁹ AR at 1021 (E-mail from Gary Sheth, EPA Region IX to Interested Parties (March 27, 2007)).
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describes changes made to both the Proposed Permit, and the Revised Proposed Permit.³⁰

The Region issued the Final Permit on December 4, 2007.³¹

II. Standard of Review

Ordinarily, the Board grants petitions for review under 40 C.F.R. § 124.19(a) only where it appears from the petition that the permitting authority's decision involved a clearly erroneous finding of fact or conclusion of law, or that the decision involves an important policy consideration or an exercise of discretion which the Board, in its discretion, should review. 40 C.F.R. § 124.19(a); see e.g., In re Miners Advocacy Council, 4 E.A.D. 40, 42 (EAB 1992); In re City of Moscow, 10 E.A.D. 135, 140-41 (EAB 2001).

The Board has repeatedly underscored, and the preamble to the Part 124 regulations makes clear, that the Board was intended to exercise its broad powers of review "only sparingly" and that "most permit conditions should be finally determined at the Regional level." Consolidated Permit Regulations: Final Rule, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); see also In re Rohm & Haas Co., 9 E.A.D. 499, 504 (EAB 2000).

Only those persons who participated in the permit process leading up to the permit decision, either by filing comments on a proposed permit or by participating in the public hearing, may petition the Board to review a permit decision. 40 C.F.R. § 124.19(a). A party who believes any condition of a draft permit is inappropriate must raise "all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under section 124.10." See 40 C.F.R. § 124.13. Moreover, "the petitioner must have raised during the public comment period the specific argument that the petitioner seeks to

³⁰ AR at 62-96 (Response to Comments at 1-35).

³¹ AR at 1 (Final Permit at 1),
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raise on appeal; it is not sufficient for the petitioner to have raised a more general or related argument during the public comment period.” See In re Government of the District of Columbia Municipal Separate Storm Sewer System, 10 E.A.D 323, 339 (EAB 2002) (construing In re RockGen Energy Ctr., 8 E.A.D. 536, 547-48 (EAB 1999)). A person who has not filed comments or participated in a hearing on a draft permit may petition for review only with respect to the “changes from the draft to the final permit decision.” 40 C.F.R. § 124.19(a).

There is no appeal as of right from Regional permit decisions. Miners Advocacy Council, 4 E.A.D. at 42. Rather, the burden of demonstrating that review is warranted rests squarely with the petitioners. 40 C.F.R. § 124.19(a); see Rohm & Haas, 9 E.A.D. at 504. Petitioners may not simply raise generalized objections to a permit, but must argue with specificity why the Board should grant review – “mere allegation[s] of error” are insufficient to warrant review. In re Puerto Rico Elec. Power Auth., 6 E.A.D. 253, 255 (EAB 1995); accord In re Phelps Dodge Corp., 10 E.A.D. 460, 496, 520 (EAB 2002). To meet this requirement of specificity, “petitioners must include specific information supporting their allegations. Petitions for review may not simply repeat objections made during the comment period; instead they must demonstrate why the permitting authority’s response to those objections warrants review.” See In re Knauf Fiber Glass, GmbH, 9 E.A.D. 1, 5 (EAB 2000); In re Genesee Power Station L.P., 4 E.A.D. 832, 866-67 (EAB 1993).

The EAB’s jurisdiction under 40 C.F.R. § 124.19(a) is limited to issues related to the “conditions” of the federal permit that are claimed to be erroneous. The EAB does not have authority to rule on matters that are outside the permit process. In re Federated Oil & Gas of Traverse City, 6 E.A.D. 722, 725 (EAB 1997); see also In re Tondu Energy Co., 9

E.A.D. 710, 716 n. 10 (EAB 2001) (the appeals process is not generally available to challenge Agency regulations); In re Environmental Disposal Systems, Inc., UIC Appeal Nos. 04-01 & 04-02, slip op. at 19 (EAB, September 6, 2005) (the Board lacks jurisdiction to adjudicate challenges concerning land use or property rights); In re Phelps Dodge Corp., 10 E.A.D. at 514 (“We are not at liberty to resolve every environmental claim brought before us in a permit appeal but must restrict our review to conform to our regulatory mandate.”) (citing In re Encogen Cogeneration Facility, 8 E.A.D. 244, 259 (EAB 1999) (no jurisdiction to consider acid rain, noise, and water-related issues in Clean Air Act (“CAA”) permitting context); Knauf Fiber Glass, 8 E.A.D. at 161-72 (“[t]he Board’s jurisdiction to review PSD permits extends to those issues directly relating to permit conditions that implement the federal PSD program”; no jurisdiction in CAA permitting context to consider issues concerning use of landfill for waste disposal, emissions offsets, National Environmental Policy Act (“NEPA”)³² issues, opacity limits, and other issues).

III. Argument

A. Petitioners Have Failed to Meet Their Procedural Burden for Establishing that Review of Several of Their Arguments Is Warranted

I. Failure to preserve issues for review

Any issue raised in a Petition for Review must have been previously raised by someone (either the Petitioner or another commenter) during the public comment period (including the public hearing), provided it was reasonably ascertainable at that time. The purpose of this requirement is to provide the permitting authority the opportunity to hear and respond to objections to permit conditions before the permit is issued. The Rodely Petition fails to establish that she or any other commenter commented that species listed on

³² 16 U.S.C. § 1531 *et seq.*
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the World Wildlife Fund list of species are present in the “ecoregion,” or the related issue of the alleged presence or possible presence of the Western Toad, and South Western Toad.³³ By making only general allegations that she meets the threshold procedural requirements by having participated in the public comment on the Permit, Petitioner Rodely has failed to meet her burden of demonstrating that EAB review of arguments related to the World Wildlife Fund list and the related issue of the presence of the toads is warranted. 40 C.F.R. § 124.19(a).

The Region’s review of public comments revealed that the World Wildlife Fund list and related issue of the alleged presence of the two toads were not raised during the public comment period or in public hearings, as required by 40 C.F.R. § 124.19(a).

While the issue of whether or not the Region evaluated potential impacts of its permitting action on federally-listed threatened and endangered species was raised during the public comment period, the specific issue of the World Wildlife Fund list of species and the issue of the two toads were not raised. Neither the Western Toad nor the South Western Toad are *federally*-listed as threatened or endangered species, and the World Wildlife Fund is not included or cross-referenced in the federal list of threatened and endangered species for this area. Therefore, neither of the species of toads, nor the World Wildlife Fund list were raised during the public comment period.

In sum, the Petitioner is now raising a specific issue that is significantly different from a comment made during the comment period, and that related comment was only raised in a very general manner during the comment period. The EAB has previously declined to review such claims. See In re Government of the District of Columbia

³³ Rodely Petition at 2. Petitioner Rodely also raises in her Petition the alleged presence of the Western Pond Turtle near the Facility. Since the turtle was raised by another commenter during the public hearing, the Region does not include the turtle in this portion of its Response to the Rodely Petition.
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Municipal Separate Storm Sewer System, 10 E.A.D. 323, 339 (EAB 2002) (construing In re RockGen Energy Ctr., 8 E.A.D. 536, 547-48 (EAB 1999)). Accordingly, the Board should decline to review arguments concerning the World Wildlife Fund list, Western Toad, and South Western Toad.

2. Failure to raise issues with sufficient specificity in Petitions for Review

In several instances, the Petitioners make highly generalized claims without presenting specific arguments to which the Region can respond. The Board has recognized that “mere allegation[s] of error” unsupported by specific information are insufficient to warrant review. See Puerto Rico Elec. Power Auth., 6 E.A.D. at 255; accord In re Phelps Dodge Corp., 10 E.A.D. at 496, 520. Moreover, “[p]etitions for review may not simply repeat objections made during the comment period; instead they must demonstrate why the permitting authority’s response to those objections warrants review.” See In re Knauf Fiber Glass, GmbH, 9 E.A.D. 1, 5 (EAB 2000); In re Genesee Power Station L.P., 4 E.A.D. 832, 866-67 (EAB 1993). Therefore, the Board should decline to review these issues.

First, in both the Rodely and Downstreamers Petitions, the Petitioners suggest that the Region erred in allowing discharges to Coarsegold Creek because the creek is dry for several months of the year. However, in neither Petition is there a specific argument to which the Region can respond. In the Rodely Petition, the Petitioner contends “[t]hat the Coarsegold Creek is dry up to five months of the year and any discharge during that time will change the ecology of the creek,” then poses as a question under the Argument section of the Petition, “How can [the Region conclude that there would be no degradation of water quality in critical periods] when the effluent is being added to a dry creek?”³⁴ In merely posing such an open-ended question, the Rodely Petition fails to articulate a

³⁴ Rodely Petition at 1.
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specific argument regarding alleged flaws in the Permit to which the Region can respond and fails to: (1) connect its contention with any condition of the Permit; (2) include specific information supporting its “argument”; and (3) demonstrate why the Region’s response to comments that may relate to this concern warrants the Board’s review.

Similarly, in the Downstreamers Petition, the Petitioner contends that “it is a fact that, at present, nothing flows down the bed of Coarsegold Creek for three to six months every year.” Petitioner Downstreamers states under the Argument section of the Petition that “If [there are no-flow conditions in the receiving waters] there would be no dilution of the discharge. All the water seen flowing down Coarsegold Creek would be polluted to some degree, for some unknown length of time - a change in the environment.”³⁵ This contention by Petitioner Downstreamers is so lacking in specificity as to why the Region’s decision may be erroneous, it does not warrant Board review. Moreover, the Downstreamers Petition fails to: (1) articulate how an alleged discharge to a dry creek relates to conditions of the Permit; (2) identify how such a discharge allowed in the permit involves a clearly erroneous finding of fact or conclusion of law; and (3) demonstrate why the Region’s response to comments that may relate to this concern warrants the Board’s review. Therefore, the Downstreamers Petitioner has failed to carry its burden to demonstrate that EAB review of this issue is warranted. See 40 C.F.R. § 124.19(a); see Rohm & Haas, 9 E.A.D. at 504.

Second, although unclear from the face of the Petition, it appears that Petitioner Downstreamers may be challenging the issuance of the permit because of the possibility that equipment may fail and humans may err while operating the Facility, which may result

³⁵ Downstreamers Petition at 4.
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in “pollution.”³⁶ However, Petitioner Downstreamers does not allege a specific error in the terms or conditions of the permit, include specific information or include a specific argument to which the Region can respond. Moreover, Petitioner Downstreamers fails to demonstrate: (1) how this issue relates to an issue that involves a clearly erroneous finding of fact or conclusion of law; or (2) how the Region’s response to this issue raised during public comment period warrants review. Therefore, Petitioner Downstreamers’ argument related to possible future equipment failure or human error should not be considered by the Board, as it fails to meet the standard for review. Although the merits of this issue are discussed below in Section III.B.3., this argument is a “mere allegation of error” unsupported by specific information, and therefore the EAB should decline to review this issue on procedural grounds. See Puerto Rico Elec. Power Auth., 6 E.A.D. at 255.

Third, the Rodely Petition states “no E.I.R. was done on the Coarsegold Creek. As a result the effect on the wildlife in the area cannot be assessed.”³⁷ However, Petitioner Rodley again fails to allege any error or include any specific information or argument to which the Region can respond. To the extent that Petitioner Rodely is arguing that the Region should have conducted an environmental assessment of the proposed permit, she fails to demonstrate why the Region’s response to this issue raised during the public comment period warrants review by the Board. Accordingly, the Board should not review the “E.I.R.” issue raised in the Rodely Petition.

Fourth, Petitioner Kipps argues that the Region erred by: (1) failing to require sufficient monitoring for turbidity and Total Coliform Organisms (“TCO”), and (2)

³⁶ Downstreamers Petition at 3.

³⁷ Rodely Petition at 1.
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concluding that effluent limitations for Trihalomethanes (“THMs”) were not required.³⁸ However, Petitioner Kipps fails to allege any specific error, or include specific information or an argument as to why the Region’s response to these issues during the public comment period warrant review by the Board. Accordingly, the Board should decline to review Petitioner Kipps’ arguments for review.

The MID Petition requests that the EAB exercise its discretion to review the contents of the permit based on potential effects of the effluent on organic farmers and other downstream users. However in making this request, Petitioner MID fails to explain how this is a policy issue worthy of Board review including how, and in what way, downstream users might be impacted. Moreover, the MID Petition fails to articulate any argument to which the Region can respond and fails to demonstrate why the Region’s response to this issue in the Response to Comments warrants review by the Board.

Finally, Petitioner MID alleges that the Region erred by failing to include in the permit: (1) a numeric effluent limitation for phosphorus; and (2) “[s]ufficient investigation and monitoring requirements” because of alleged unknown flows and effects of phosphorus in unknown concentration in the discharge on the beneficial uses of the receiving waters.³⁹ However, MID fails to include specific information or any argument as to why the Region’s response to these issues during the public comment period warrants review by the Board. Therefore, the Region urges the Board to deny these issues for review.

3. Failure to properly raise an issue for review

As mentioned above, Petitioner Rodely states in her Petition that “No E.I.R. was

³⁸ Kipps Petition at 1.

³⁹ MID Petition at 1.
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done on the Coarsegold Creek. As a result the effect of on the wildlife in the area cannot be assessed.” Additionally, Petitioner Rodely states in her Petition that the World Wildlife Fund lists 367 species in this ecoregion, including two species of toads and a species of turtle. By making these statements, Petitioner Rodely might be said to suggest indirectly that the Region did not comply with NEPA and/or ESA.⁴⁰ Petitioner Rodley does not, however, list either NEPA or ESA compliance as an issue presented for review, so these issues are not properly before the Board. Accordingly, the Board should decline to review those arguments.

Additionally, the Downstreamers Petition states as “Condition 1” of its “Argument” the following: “The petitioner knows of no argument that can be made to challenge the facts referred to. The writers of the permit, by referring to ‘upsets’ and ‘exceedances’, acknowledge that processes and people can malfunction. The requirement that the testing called for in the permit should be monitored is a similar recognition. Examples of the consequences of plant or people failure are documented in Exhibit D. At the Thunder Valley Casino in Lincoln, California there were ‘145 serious violations over a period of 18 months’. The violations started the first week the plant went into operation. The fines levied, in this case, amounted to \$435,000. The amount of pollution put into the environment is not known.”⁴¹ By making these statements, Petitioner Downstreamers seems to be implying that compliance with the terms of the permit or enforcement of the Permit may be unsatisfactory. However, since Petitioner Downstreamers does not specifically present the issue of enforcement of the Permit as an issue for review, this issue is not properly before the Boards. Accordingly, the Board should decline to review

⁴⁰ Rodely Petition at 1.

⁴¹ Downstreamers Petition at 3.
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Petitioner Downstreamers' enforcement-related argument.

B. Response to Petitioners' Arguments

In determining whether to grant review of a petition for review of an NPDES permit, the Board first looks to whether the petitions meet the threshold procedural requirements of the permit appeal regulations. If these threshold procedural requirements are satisfied, the Board then determines whether the petitions for review "show that the permit decision in question was based on a clearly erroneous finding of fact, or conclusion of law, or if the decision involves an important policy consideration or exercise of discretion that warrants review." 40 C.F.R. § 124.19(a); In re Knauf Fiber Glass, GmbH, 9 E.A.D. 1, 6 (EAB 2000). As addressed in Section III.A above, the Petitioners have failed to meet the threshold procedural requirements on most of the arguments they raise in their petitions. Moreover, even if the Petitioners were not procedurally barred from raising these arguments, the Board should decline review of these and the other arguments addressed below, since the Petitioners fail to meet their burden of demonstrating that review under 40 C.F.R. § 124.19(a) is warranted.

1. This Permit is exempt from NEPA

As noted above, Petitioner Rodely does not list NEPA compliance as an issue presented for review, so this issue is not properly before the Board. In fact, Petitioner Rodely raises a concern that an "E.I.R." was not done for the project. As explained in Section 3-1 of the Response to Comments,⁴² Environmental Impact Reports ("EIRs") are generally required under actions subject to the California Environmental Quality Act ("CEQA"). As a federal action, the Permit was not subject to CEQA. The Region's response both here and in the Response to Comments assumes that the Petitioner intended

⁴² AR at 72 (Response to Comment Document at 11).
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to contend that the Region was required to comply with NEPA. To the extent Petitioner intended to assert that the Region did not comply with NEPA when it issued the Permit, the argument would fail because the Permit is exempt from the requirements of NEPA.

As explained by the Region in section 3-1 of the Response to Comments, the CWA expressly provides that, with the exception of two categories, neither of which applies to this permit, actions taken by EPA pursuant to the CWA are not subject to NEPA. Section 511(c) of the CWA is explicit: the only EPA actions under the CWA that require the Agency to comply with NEPA are the funding of publicly owned treatment works (“POTWs”) and the issuance of NPDES permits to “new sources.” 33 U.S.C. § 1371(c); see also Phelps Dodge Corp., 10 E.A.D. at 475; NRDC v. EPA, 859 F.2d at 167; NRDC v. EPA, 822 F.2d at 127. CWA Section 306 defines a “new source” as “any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section [“new source performance standard,” or “NSPS”] which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.” 33 U.S.C. § 1316(a)(2); see also NRDC v. EPA, 822 F.2d at 112; Phelps Dodge Corp., 10 E.A.D. at 476 (noting that “NSPSs do not exist, nor have they yet been proposed, for every possible point source category”); In re Town of Seabrook, 4 E.A.D. 806, 816-17 n.20 (EAB 1993) (finding that a proposed WWTP was not a “new source” because no applicable NSPSs exist for such facilities). EPA has not provided financial assistance for the construction of the Facility, nor has it promulgated under CWA § 306 new source standards of performance applicable to POTWs, such as this Facility. Therefore, under the explicit terms of CWA § 511, the Permit is exempt from NEPA.

2. The Region fully complied with the ESA

As noted above, Petitioner Rodely does not list ESA compliance as an issue presented for review, so this issue is not properly before the Board. Even it were, however, the Region fully complied with the ESA's requirements in developing and issuing the Permit.

A federal agency's obligations under the ESA are clearly stated in that statute and its implementing regulations at 50 C.F.R. Part 402. Under ESA § 7(a)(2), federal agencies must ensure, in consultation with the USFWS and/or National Marine Fisheries Services ("NMFS"),⁴³ (collectively, the "Services") that their actions are not likely to jeopardize the continued existence of any listed threatened or endangered species ("listed species") or result in the destruction or adverse modification of designated critical habitat for listed species. 16 U.S.C. § 1536(a)(2). Prior to taking any final agency action, a federal agency must consider whether its action may affect any listed species or designated critical habitat. 50 C.F.R. § 402.14(a). If so, the agency must initiate informal or formal consultation with the relevant Service(s). 50 C.F.R. §§ 402.13, 402.14. If, during the consultation process, the agency concludes that its action is "not likely to adversely affect" the listed species or critical habitat, then it will communicate that finding to the appropriate consulting Service and, after it receives the written concurrence of that Service, conclude its consultation. 50 C.F.R. §§ 402.13(a), 402.14(b)(1). If a Federal agency determines that its action will have no effect on any listed species or designated critical habitat, then consultation with the Services is not necessary. 50 C.F.R. § 402.14(a).

⁴³ The USFWS has jurisdiction over terrestrial species and most freshwater aquatic species. NMFS Fisheries has jurisdiction over marine species and anadromous species such as salmonids.
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As explained in Section 8-5 of the Response to Comments,⁴⁴ the Region followed these requirements as part of the permit application process. The Region requested information from the discharger and USFWS⁴⁵ regarding the potential presence of threatened or endangered species. From the information received, and from other information it reviewed the Region determined that there would be no effect on any federally-listed species, or on federally-designated critical habitat.⁴⁶ As the Region determined that its proposed action would have no effect on listed species, consultation with USFWS and NMFS was not required. See 50 C.F.R. § 402.14(a); Southwest Ctr. for Biological Diversity v. United States Forest Serv., 100 F.3d 1443, 1447-48 (9th Cir. 1996). The Region's obligations under ESA § 7 were thus satisfied. Petitioner Rodely implies that the Region erred by not considering a list of species prepared by the World Wildlife Fund that allegedly includes the Western Toad, the Southwestern Toad, and the Western Pond Turtle. However, as explained above, the Region fulfilled its obligation under ESA which does not include reviewing species on lists generated by the World Wildlife Fund. Additionally, since neither species of toad nor the turtle are a federally-listed threatened or endangered species, the Region did not err by not considering potential impacts to them during the permit process.

3. CWA and conditions in Permit provide adequate compliance mechanisms

As discussed above, Petitioner Downstreamers failed to properly raise enforcement as an issue for review.

⁴⁴ AR at 89 (Response to Comments at 28).

⁴⁵ The Fresno River, from source to Hidden Dam, and waters flowing into this segment, are above an impassable dam. The discharges would therefore be into waters where no anadromous or marine species are found. For this reason, the Region did not request species information from NMFS.

⁴⁶ AR at 1275 (Memorandum to Record re: Review of Information and Literature at 5).
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Even if the issue had been raised, it would be appropriate for the Board to follow its precedent of declining to review generalized concerns or objections regarding the enforcement of a permit condition. See City of Newburyport, NPDES Appeal No. 04-06, slip op. at 26 (“The Board has declined to review generalized concerns or objections regarding the enforcement of a permit condition. See Federated Oil & Gas, 6 E.A.D. at 722, 730 (declining to review objections related to the ability of a permit issuer to ensure compliance); In re Envotech, L.P., 6 E.A.D. 260, 273-74 (EAB 1996) (‘The Board has no jurisdictional basis to review a permit based solely on a company’s past compliance history.’); In re Brine Disposal Well, 4 E.A.D. 736, 746 (EAB 1993) (denying review where petitioner alleged concern over EPA’s ability to enforce compliance with regulatory requirements).”)

Moreover, to the extent that the Petitioner is raising generalized objections to the enforcement scheme under the CWA and its implementing regulations, the Board should deny review since it does not have authority to rule on matters that are outside the permit process and the appeals process is not generally available to challenge EPA regulations. In re Tondu Energy Co., 9 E.A.D. 710, 716 n. 10 (EAB 2001).

4. The Region properly addressed the issue of possible equipment malfunction and human error in the Permit

As an initial matter, the EAB should decline to review this argument on procedural grounds because Petitioner Downstreamers failed to raise this issue with sufficient specificity in the Petition for Review to warrant review. In fact, the Downstreamers Petition is so lacking in specificity as to how its contention relates to an alleged reviewable error by the Region that the Petitioners provide the Board with no basis for considering the issue on its merits. With that said, Petitioner Downstreamers correctly note that the Region

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recognizes that upsets and exceedances at the Facility may occur. Specifically, the Petitioner states “the writers of the permit, by referring to ‘upsets’ and ‘exceedances’, acknowledge that processes and people can malfunction. The requirement that the testing called for in the permit should be monitored is a similar recognition.”⁴⁷ However, contrary to providing support for the argument that the Permit should not be issued, the Region’s inclusion of these conditions in the Permit is *required* by the NPDES regulations.

Specifically, 40 C.F.R. § 122.41 sets forth permit conditions that must be included in all NPDES permits. Among these conditions, the regulations require that all NPDES permits include, either expressly or incorporated by reference, a number of standard provisions, that require the permittee to take certain actions should there be an upset, malfunction or any other occurrence at a facility that may result in an exceedance or any other violation of the permit. These required permit conditions include the following: (1) duty to comply with the permit (40 C.F.R. § 122.41(a)) ; (2) duty to mitigate any discharge that has a reasonable likelihood of adversely affecting human health or the environment (40 C.F.R. § 122.41(d)) ; (3) duty to provide advance notice to the Region of any planned changes in the permitted facility or activity that may result in noncompliance with the Permit (40 C.F.R. § 122.41(l)(2)) ; and (4) duty to provide notice of any unanticipated bypass or upset that results in an exceedance of a permit effluent limitation (40 C.F.R. § 122.41(m)(3)). Accordingly, the Board should deny review of this issue, because the conditions of the permit it complains about are not only “not clearly erroneous,” but appropriate and required by the NPDES regulations.

⁴⁷ Downstreamers Petition at 3.
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5. The Region properly considered flow rate of receiving waters in establishing permit conditions

As discussed above, arguments raised by the Petitioners that relate to the flow volume of receiving waters were not raised with sufficient specificity to warrant review. Therefore, the EAB should decline to review these arguments on procedural grounds. Even if the Petitioners were not procedurally barred, the Board should decline to review these issues because the Region, as discussed below, properly considered the flow volume of receiving waters to the extent required by the CWA. Moreover, the Region is entitled to substantial deference on technical issues, such as these, and Petitioners must meet a “heavy burden,” a burden they clearly have not met. City of Newburyport Wastewater Treatment Facility, NPDES Appeal No. 04-06, slip op. at 20.

Petitioners appear to be raising three issues related to the flow volume of receiving waters. Specifically, these issues are: (1) Petitioners Rodely and Downstreamers allege that the addition of any water during low or no flow conditions will result in a change in the environment and therefore both Petitioners imply that such discharges should not be allowed by the Permit; (2) Petitioner MID argues that the Region did not adequately analyze the effect of low flow conditions on potential nutrient loading; and (3) Petitioners Rodely and Downstreamers appear to question whether the Region analyzed how low flow conditions might result in an exceedance of an applicable WQS. For the reasons set forth in detail below, the Petitioners’ arguments fail because the record demonstrates that the Region properly considered flow volume of receiving waters in drafting conditions of the Permit.

a. Discharge into low or no-flow conditions of receiving waters

It appears that Petitioners Rodely and Downstreamers are arguing that the Region erred by authorizing the addition of *any* effluent into a receiving water when there are low flows or no flows. The CWA, and its implementing regulations, prohibit discharges of pollutants from point sources except in compliance with § 301, 302, 303, 307, 318, 402 or 404 of the Act. 33 U.S.C. §§ 1311, 1312, 1313, 1317, 1328, 1342, 1344. EPA properly included conditions ensuring compliance with the applicable provisions of the CWA. Petitioners have cited no basis upon which EPA should have prohibited discharges to Coarsegold Creek or any other receiving waters that the Facility would discharge into under the Permit. Neither the CTR nor the RB5 Basin Plan prohibits discharges to surface waters.⁴⁸

To the extent that the Petitioners are arguing that flow of the receiving waters was not considered during the permitting process, they are mistaken. The record reflects that the Region did evaluate information on the hydrology of the receiving waters, including Coarsegold Creek and the Fresno River. Evaluating impacts to a receiving water from additional flow alone is not a requirement of the permitting process. Nevertheless, when reviewing an application for an NPDES permit, the Region typically reviews available information on the hydrology of receiving waters to evaluate whether the added discharge would detrimentally affect the integrity of the riparian system of the receiving water, and thus detrimentally affect designated beneficial uses.

⁴⁸ Petitioner Downstreamers mentions the Dry Creek Rancheria permit as “precedent” for prohibiting a discharge when the receiving waters are at no or low-flow conditions. The federally-approved State water quality standards that are applicable to the Dry Creek facility are different than those that apply to the Facility. Most notably, the Basin Plan that applies to the Dry Creek Facility, unlike RB5 Basin Plan, explicitly prohibits discharges to Stream P1 (receiving water for the Dry Creek Facility) between May 15 and September 30 each year and during other periods when the waste discharge flow would exceed one percent of the Russian River’s flow. See AR at 1849 (RWOCB Basin Plan Region 1 at 4-1.00).

In this instance, the Region reviewed several documents, including the Fresno River Nutrient Reduction Plan (“Fresno River Study”)⁴⁹ and the Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino,⁵⁰ to determine existing flows in the Creek and the River, and to assess the impact of additional flows at the maximum dry-weather discharge rate, i.e. the maximum discharge rate from the new treatment facility during periods of lowest flow in the receiving waters. The Region found that the in-stream flow of Coarsegold Creek varied from less than 0.1 cfs to more than 11 cfs between May 2003 and April, 2004 and that the flow of the Fresno River, the ultimate downstream water 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 the year.⁵¹ The Region then calculated that the maximum dry-weather discharge rate into downstream waters from the new treatment plant would be approximately 0.1 cfs.⁵² Based on the estimated variation in flows of Coarsegold Creek and the Fresno River and the Facility’s maximum dry-weather discharge rate, the Region determined that the added flow from the permitted facility would not cause significant impacts to the integrity of the riparian systems of the receiving waters, in this case stream/river beds, during low flow periods.⁵³ Therefore, contrary to

⁴⁹ AR at 830 (Fresno River Study at 6).

⁵⁰ AR at 770 (Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino at 10).

⁵¹ AR at 830, 840 (Fresno River Study at 6, 16).

⁵² This figure is based on the design maximum flow of 350,000 gpd, the design average flow of 235,000 gpd at full capacity, and the Tribe’s projection that 70% of this flow would be recycled and/or re-used during dry (low flow) periods. The 30% of 235,000 gpd amounts to approximately 0.1 cfs. See AR at 178 (Draft Fact Sheet at 2); AR at 286 (E-mail from Jack Niblett to Gary Sheth (February 19, 2007)).

⁵³ The Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino, which analyzed the impacts of storm water flows from the resort/casino construction site on downstream waters, concluded that the 10-year storm water flows from Tribal property would be approximately 70 cfs at the culvert at Highway 41, which empties into Coarsegold Creek. The Report concluded that there would be no adverse impacts to downstream properties from this flow. AR at at 772 (Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino at 17). The maximum dry-weather discharge rate from the new treatment plant is well below this flow rate in Coarsegold Creek. As for the Fresno River, the maximum dry-weather discharge

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what Petitioners Rodely and Downstreamers contend, the Region considered flow of the receiving waters when it reviewed the Facility's application for the Permit. Moreover, the Petitioners have failed to demonstrate that the Region committed clear error or abuse of discretion in evaluating the hydrology of the receiving waters, or in addressing the potential impact of the discharge on the riparian system, and thus this claim should be dismissed. 40 C.F.R. § 124.19(a); see e.g., In re Miners Advocacy Council, 4 E.A.D. 40, 42 (EAB 1992); In re City of Moscow, 10 E.A.D. 135, 140-41 (EAB 2001).

b. The Region properly analyzed the effect of low flow conditions on potential nutrient loading.

As the permitting agency, the Region must impose conditions in an NPDES permit to protect downstream uses. 40 C.F.R. § 122.4(d). In this case, the State of California, through the RB5 Basin Plan, designates the beneficial uses for the waters downstream of the Facility. Beneficial uses are protected by water quality standards that are composed of use designations, and numeric and/or narrative water quality criteria. With respect to nutrients, the RB5 Basin Plan includes the following narrative criterion: "Water shall not contain biostimulatory substances which promote aquatic growth in concentrations that cause nuisance or adversely affect beneficial uses."⁵⁴ The RB5 Basin Plan does not include any numeric criteria that address nutrient loading for the receiving waters downstream of the Facility. The Region included this narrative water quality criterion as an effluent limitation in the Permit⁵⁵ and also evaluated the specific conditions of these receiving waters and the discharge's effect on these waters and concluded that the discharge would

rate from the new treatment plant would be less than about 1% of the River during low flow periods. See AR at 73 (Response to Comments at 12).

⁵⁴ AR at 1787 (RB5 Basin Plan at III.3.00).

⁵⁵ AR at 5 (Final Permit at 5).
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not result in non-attainment of the narrative nutrient criterion.

In evaluating potential effects of the Facility's effluent on nutrient loading, the Region relied primarily on the Fresno River Study,⁵⁶ which was prepared by the County of Madera and funded in part by EPA and the State Water Resource Control Board. The Fresno River Study is a comprehensive attempt to identify nutrient sources, and model nutrient loading in the Fresno River watershed. The Fresno River Study found that nutrient concentrations in the watershed do not increase with proximity to Hensley Lake. Rather, nutrient concentrations were found to be the lowest in the Fresno River just above the point of inflow to Hensley Lake, and highest in Hensley Lake. Consequently, the Fresno River Study concludes that the sampling data suggests that the Fresno River water actually dilutes nutrient concentrations in Hensley Lake.⁵⁷

Additionally, the Region determined that when the receiving waters were at low flow conditions, the discharge from the Facility, assuming discharge at the maximum dry-weather discharge rate,⁵⁸ would be less than 1% of the flow into the Fresno River.⁵⁹ Consequently, the Region concluded, based on both the Study's finding that the Fresno River is likely to be diluting nutrient concentrations, and its determination that the effluent from the Facility would constitute a relatively tiny fraction of the overall flow into the Fresno River, that the potential nutrient loading from the permitted discharge is not likely to be significant. Therefore, contrary to what Petitioner MID contends, the Region did

⁵⁶ AR at 816-980 (Fresno River Study at 1-52a and Appendices A-G).

⁵⁷ AR at 883 (Fresno River Study at 9).

⁵⁸ Contrary to Petitioner MID's argument that EPA's analysis of flow volumes was deficient because the Permit does not specify the "actual or approximate flows to be discharged," (MID Petition at 7), EPA's analysis of flow volumes was based on the maximum design flow, the average flow at full capacity and the Tribe's estimated level of recycling and re-use of treated effluent during dry (i.e. low flow) periods. See fn. 52, above.

⁵⁹ AR at 73 (Response to Comment Document at 12).

“investigate” and properly considered the potential effects of the effluent from the Facility on nutrient loading. Moreover, the Rodely and Downstreamers Petitions do not allege that the Region’s decision involved any clearly erroneous finding of fact or conclusion of law, and therefore the Board should decline to review these issues. 40 C.F.R. § 124.19(a); see e.g., In re Miners Advocacy Council, 4 E.A.D. 40, 42 (EAB 1992); In re City of Moscow, 10 E.A.D. 135, 140-41 (EAB 2001).

c. The Region properly analyzed the effect of low flow conditions when establishing permit conditions.

Petitioners Rodely and Downstreamers appear to express concern that low flow conditions in the downstream waters might result in exceedances of water quality standards. Permit conditions, however, were established to ensure that downstream WQS will be met. The Region included water quality-based effluent limitations necessary to achieve the water quality standards found in the CTR and in the RB5 Basin Plan in the Permit and required that those effluent limitations be met at the “point of discharge,” i.e., where the water leaves the Facility and enters a receiving water. Thus, the Permit incorporates effluent limitations that do not allow or provide for any dilution that might otherwise have occurred between the point of discharge and the downstream boundary that is located about a mile from the Facility. By imposing effluent limitations to meet downstream standards directly at the point of discharge, and eliminating dilution as a factor, the effluent into the downstream waters will meet applicable water quality standards regardless of flow.

6. The Region properly did not include an effluent limitation for phosphorus.

Petitioner MID argues that the Region erred by failing to include an effluent limitation for phosphorus in the Permit. As mentioned above, the Region is entitled to

substantial deference on technical issues, such as this, and Petitioners must meet a “heavy burden,” a burden Petitioner MID clearly has not met. City of Newburyport Wastewater Treatment Facility, NPDES Appeal No. 04-06, slip op. at 20.

As set forth above, with respect to nutrient loading, the RB5 Basin Plan includes the following narrative criterion: “Water shall not contain biostimulatory substances which promote aquatic growth in concentrations that cause nuisance or adversely affect beneficial uses.” The RB5 Basin Plan does not include any numeric criteria that address nutrient loading for the receiving waters downstream of the Facility. Consistent with the RB5 Basin Plan, the Permit includes the narrative criterion verbatim as an effluent limitation and does not include a numeric criterion.⁶⁰

The Region acknowledges that phosphorus may be a factor in contributing to algal blooms in Hensley Lake. However, as explained in Section 5-16 in the Response to Comments,⁶¹ the Region, consistent with the Fresno River Study, determined that there was insufficient basis to include a specific effluent limitation for phosphorus at this time given that there is not enough specific information on the source of nutrients in the watershed. Specifically, the Fresno River Study concluded that neither the hydrologic models for nor information on nutrient loading in the Fresno River and Hensley Lake were sufficient to develop a model that could accurately predict quantitatively and qualitatively, the contaminants that contributed to algal blooms in Hensley Lake.⁶² This conclusion, coupled with the fact that the permitted discharge would constitute a tiny fraction of the overall flow (and thus a potentially small source of phosphorus), were the basis of the Region’s

⁶⁰ AR at 5 (Final Permit at 5).

⁶¹ AR at 81 (Response to Comment Document at 20).

⁶² AR at 834-835 (Fresno River Study at 10-11).

decision not to include a numeric effluent limitation for phosphorus in the Permit at this time. The Region, however, included a provision in the Permit that requires the Facility to monitor for phosphorus on a weekly basis, and if monitoring data suggests that phosphorus levels may be contributing to downstream nutrient loading, EPA may reopen the permit and impose phosphorus limits.⁶³ The MID Petition fails to demonstrate that the Region's decision to not include a specific effluent limitation for phosphorus involved a clearly erroneous finding of fact or conclusion of law. Therefore, the Board should decline to review this issue. 40 C.F.R. § 124.19(a); see e.g., In re Miners Advocacy Council, 4 E.A.D. 40, 42 (EAB 1992); In re City of Moscow, 10 E.A.D. 135, 140-41 (EAB 2001).

7. The Region properly issued notification of its permit decision and followed requirements applicable to Response to Comments

The Petitioners allege that the Region committed the following three procedural errors in issuing the Permit: (1) Petitioner Kipps alleges that the Region erred in providing notice of its permit decision by failing to include "Appendix A"⁶⁴ to the Response to Comments; (2) Petitioner Downstreamers allege procedural error because the Region failed to specify adequately and clearly which provisions of the draft permit had been changed in the final permit and the reasons for such changes; and (3) Petitioner Rodely argues that the Region failed to reference literature the Region relied on in concluding that it would be safe to discharge treated wastewater. As discussed below, the Region fully complied with the permit procedures, and therefore urges the Board to not accept for review any of the procedural issues raised in the Kipps, Downstreamers and Rodely Petitions.

Notwithstanding the Region's argument that these issues should not be reviewed by the

⁶³ AR at 27 (Final Permit at 27).

⁶⁴ Appendix A documents the results of a priority pollutant scan conducted by BSK Analytical Laboratories. See AR at 97-103 (Priority Pollutant Scan, (Appendix A to Response to Comments) at 1-7).
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Board, the Region responds to these claims as follows.

- a. The Region properly provided notice of its final permit decision.

40 C.F.R. § 124.15, entitled "Issuance and effective date of permit," provides in pertinent part that the Region "shall issue a final permit decision and shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for ... contesting a decision on an NPDES permit ... under 124.19 of this part. For the purpose of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit." Accordingly, Petitioner Kipps, a person who submitted written comments, was entitled under the regulation to be notified of the Region's decision to issue the Permit and to receive a reference to the procedures for contesting an NPDES permit.

On December 7, 2007, the Region sent notices of its final permit decision to issue the Permit to all persons who provided comments during the public comment period, including Petitioner Kipps, via electronic mail.⁶⁵ Included with these notices, the Region included an electronic copy of the Final Fact Sheet which referenced appeal procedures for contesting the Region's decision on the Permit that are available under 40 C.F.R. § 124.19, and, while not required, the Final Fact Sheet outlined and described these procedures. Therefore, by sending the notice of its final decision to issue the Permit, and by providing the Final Fact Sheet, the Region fully complied with the requirements of 40 C.F.R. § 124.15.

Above and beyond the requirements of 40 C.F.R. § 124.15, the Region also provided to all persons who commented on the Proposed Permit and/or Revised Proposed

⁶⁵ AR at 60-61 (E-mail from Gary Sheth, EPA Region IX to Interested Parties (December 7, 2007)).
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Permit an electronic copy of the Response to Comments with the notice of *the final* permit decision. The Region acknowledges that “Appendix A” referenced in the Response to Comments was inadvertently not included in the copy sent with the notice of the final permit decision. However, given that the Region was not required to send the Response to Comments to persons who commented on the Proposed and/or Revised Proposed Permit, the oversight of not sending Appendix A is irrelevant to the issue of whether or not the Region complied with the requirements of 40 C.F.R. § 124.15.

The Region recognizes its obligation to issue a response to comments when it issues a final permit decision. 40 C.F.R. § 124.17 provides, in pertinent part, that “at the time that any final permit decision is issued under § 124.15, [the Region] shall issue a response to comments.” Consistent with Regional practice, the Region issued its final permit decision and Response to Comments that included Appendix A, by publishing these documents along with the Fact Sheet on the Region’s website. Therefore, the Region complied with the requirement to issue a response to comments when it issued the final permit decision.

In her Petition, Petitioner Kipps’ states that the “appendix should be distributed to interested parties and the deadline for requesting EPA review [sic] the permit should be extended accordingly.”⁶⁶ However, it is important to note that Petitioner Kipps has never requested a copy of Appendix A from the Region nor does she address in her Petition the fact that the Appendix was available on the Region’s website as described above and consistent with the regulations. Rather, Petitioner Kipps simply states that the failure of receiving Appendix A, presumably with the notice of the final permit decision, made it “impossible to review data and to ascertain the adequacy of the Region’s reasonable

⁶⁶ Kipps Petition at 1.
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potential analysis and failure to include THM as a priority pollutant.”⁶⁷ The Region respectfully disagrees that it was impossible for Petitioner Kipps or any other interested party to review data and evaluate the Region’s reasonable potential analysis since Appendix A had been part of the Administrative Record prior to issuance of the Final Permit and was made available on the Region’s website to her and anyone else who might be interested on or about December 14, 2007.

Even without this data, Petitioner Kipps poses an argument in her Petition as to why she believes THMs may be present in the wastewater, an argument that the Region addresses substantively below. Accordingly, to the extent the Region erred in not including Appendix A when it issued the notice of the final permit decision, it should be treated as harmless since the Petitioner had no legal right to receive the information directly, the information was otherwise readily available to Petitioner and any other interested party through the Region’s website, and Petitioner in fact made an argument regarding THMs despite not having received Appendix A with the Response to Comments. Accordingly, since the Region complied with the notice provisions of the procedures, the Board should deny this issue for review.

b. The Region identified provisions in the revised proposed permit that were changed in the final permit and provided the reasons for the change.

Petitioner Downstreamers alleges that the Region erred by failing to specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reason for such change “in a way that allowed changes and reasons to be readily linked and judged.” With one exception discussed below, the Region disagrees with Petitioner Downstreamers’ contention, as the Region clearly and appropriately identified what

⁶⁷ Kipps Petition at 1.

conditions of the Revised Proposed Permit⁶⁸ were changed in the Final Permit and the reasons therefore. The single exception, a change which was not identified in the Response to Comments, was at most a harmless error.

40 C.F.R. § 124.17(a)(1) provides in pertinent part that the response to comments shall “specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change.” The Region made the following three changes to the Revised Proposed Permit in the Final Permit: (1) added effluent limitations for Copper and Zinc; (2) added ambient monitoring at the edge of the boundary of Tribal Land; and (3) added a requirement that the Permittee conduct an additional priority pollutant scan. As explained below, the Region clearly specified in the Response to Comments the changes it made to provisions in the draft permit related to changes 1 and 2 above, and the reasons therefore. Admittedly, the Region did not address the third change noted above in the Response to Comments. However, as explained below, this oversight was harmless.

With respect to the first change, as explained in Sections 5-14 and 5-15 of the Response to Comments,⁶⁹ the Region added limitations for Copper and Zinc based on the results of a priority pollutant scan conducted by the Facility which indicated that there may be reasonable potential for the discharge to cause or contribute to exceedences of such chemicals. In addition, with respect to the second change, the Region, as explained in Section 5-19 of the Response to Comments,⁷⁰ agreed with the commenter and included

⁶⁸ As explained in Section I.C above, the Region held two public comment periods. After the first public comment period but before the second public comment period, the Region made changes to the originally proposed permit. Thus, when the Region re-opened the public comment period on March 23, 2007 on its draft permit, it was to take comment on the “revised proposed permit.”

⁶⁹ AR at 80 (Response to Comments at 19).

⁷⁰ AR at 82 (Response to Comments at 21).

monitoring not just at the point of discharge, but also at the farthest practicable monitoring point on Tribal land.

Finally, the Region added a requirement in the Permit that requires the Permittee to conduct an additional priority pollutant scan. While not explained in the Response to Comments, the Region discusses this change in the Final Fact Sheet.⁷¹ To the extent the Region erred in not addressing this change in the Response to Comments it should be treated as harmless to the Petitioners since the addition of this requirement cannot be said to have made the Final Permit any less stringent than when it was proposed.

c. Region did not and was not required to cite documents in the Response to Comments

Petitioner Rodely alleges that the Region erred by failing to cite to documents in Section 3-3 of the Response to Comments that the Region relied on to conclude that it would be safe to discharge treated wastewater.⁷² As explained below, the Region was not required to cite to any documents in the Response to Comments, and therefore Petitioner Rodely's request for review should be denied.

40 C.F.R. § 124.17(b) provides in relevant part, "For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in 124.18." However, it does not require that the response to comments itself include such citations. Petitioner Rodely's argument fails for two reasons. First, the Region did not cite to any document in the response the Petitioner refers to. Rather, the Region merely refers generally to "literature" it reviewed in evaluating potential impacts on species as part of the ESA process. Therefore, the Region

⁷¹ AR at 50 (Final Fact Sheet at 14).

⁷² Rodely Petition at 1.

did not “cite” to any document in Section 3-3 in the Response to Comments.⁷³

Second, Petitioner Rodely’s argument fails because even assuming for the sake of argument that the Region “cited” to documents in the response at issue, all of the literature considered in the Region’s evaluation of this issue is included in the administrative record, as required by 40 C.F.R. § 124.17(b). Therefore, the Region did not err in its Response to Comments by not citing documents in the manner suggested by Petitioner Rodely, and therefore the Board should decline to review this claim that the Region violated 40 C.F.R. § 124.17(b).

8. The Region required appropriate monitoring frequencies for turbidity and total coliform organisms (TCO)

Petitioner Kipps argues that the Region erred in not requiring monitoring of turbidity and total coliform organisms (TCO) at the same frequency required under Title 22.⁷⁴ However, Title 22 requirements are neither federally applicable water quality standards nor federally-approved state water quality standards. Rather, Title 22 requirements, which are more stringent than applicable federal and federally-approved State WQS, were established by the State and apply to water that is reclaimed, i.e., reused and recycled.⁷⁵ As noted above in Section I.B, the Region, incorporated into the permit, *effluent standards for discharges to surface waters*, that are consistent with Title 22 to accommodate the proposed design and operation of the Facility to maximize reclamation of treated wastewater.

Petitioner Kipps contends that the Region should have required the monitoring

⁷³ AR at 73 (Response to Comments at 3).

⁷⁴ Kipps Petition at 1.

⁷⁵ AR at 1932-1933 (California Code of Regulations, Title 22, Water Recycling Criteria at 602.1-602.2).

frequencies for TCO and turbidity in the Permit that are required in Title 22. However, the Region respectfully disagrees with Petitioner. The Title 22 standards, including the rigorous monitoring for TCO and turbidity, apply to water that is being reclaimed in a variety of ways, including for direct irrigation of food crops, and not to water that is being discharged to a surface water under an NPDES permit. Therefore, it was reasonable for the Region to establish monitoring frequencies consistent with the CWA rather than the State reclamation requirements.

The frequency of monitoring for TCO and turbidity effluent limitations that the Region included in the Permit are consistent with EPA guidance. Specifically, the NPDES Permit Writers Manual states that “the intent is to establish a frequency of monitoring that will detect most events of non-compliance without requiring needless or burdensome monitoring.”⁷⁶ Accordingly, the Region determined that monitoring for TCO weekly versus daily and turbidity daily versus continuously are appropriate, given that under the Permit the water is being discharged to surface waters and not being reclaimed. Thus the monitoring requirements for turbidity and TCO in the Permit are adequate to “detect most events of non-compliance without requiring needless or burdensome monitoring.” The Region is entitled to substantial deference on technical issues, such as this, and the Petitioner has failed to meet its burden of establishing that the Region’s judgments in this regard are clearly erroneous or otherwise warrants board review. City of Newburyport Wastewater Treatment Facility, NPDES Appeal No. 04-06, slip op. at 20.

9. The Region properly did not include effluent limitations for THMs

Petitioner Kipps argues that “[d]ue to the tribe’s use of chlorine for wastewater disinfection prior to in-casino reuse, there appears reasonable potential for the final

⁷⁶ AR at 1867 (EPA NPDES Permit Writers Manual at 119).

discharge, even though disinfected by ultraviolet treatment technology, to contain individual THMs⁷⁷ in concentrations that approach, if not exceed levels prescribed in the California Toxics Rule.⁷⁸ At a minimum, Petitioner Kipps requests that the Region “include a reopener to allow for the establishment of effluent limitations for individual THMs should monitoring data demonstrate the discharge has a reasonable potential for causing exceedances California Toxic [sic] Rule limits for individual THMs.”⁷⁹ As explained below, the Region properly did not include effluent limitations for THMs in the Permit, and properly included, as sought by the Petitioner: (1) a requirement that another priority pollutant scan be conducted within 90 days of the effective date of the Permit; and (2) if exceedances or a reasonable potential for exceedances of levels for priority pollutants are detected, a reopener provision to include appropriate monitoring and effluent limitations. As noted above, the Region is entitled to substantial deference on technical issues, such as this, and Petitioner Kipps has failed to meet her burden of establishing that the Region’s judgments in this regard are clearly erroneous or otherwise warrants board review. City of Newburyport Wastewater Treatment Facility, NPDES Appeal No. 04-06, slip op. at 20.

Among other things, permitting agencies are required to include in NPDES permits limitations for any “pollutant or pollutant parameter (whether conventional,

⁷⁷ THMs, or trihalomethanes, are disinfectant byproducts that may form when chlorine is used. As explained in the Response to Comments, and mentioned by Petitioner Kipps, the permitted facility will use a different technology than what is currently being used. Under the Permit, the Tribe will utilize ultraviolet (UV) disinfection, not chlorine disinfection (which is used in the current system), to treat wastewater. Chlorine will only be used to treat wastewater as an emergency back-up under the Permit, when UV disinfection is not possible, and to treat water used for recycling and reuse. Therefore, during routine, normal operations, chlorine is not likely to be present in the wastewater discharged to surface waters.

⁷⁸ Kipps Petition at 1.

⁷⁹ Kipps Petition at 1.

nonconventional, or toxic), including whole effluent toxicity, that is or that may be discharged at a level that causes, has the reasonable potential to cause, or contributes to an excursion above any water quality criterion, including narrative water quality criteria.” 40 C.F.R. §122.44(d)(1)(i). Included in this list are “priority pollutants” identified pursuant to Section 307(a) of the CWA, 33 U.S.C. § 1317(a), for which EPA promulgated criteria in the California Toxics Rule, 40 C.F.R. § 131.38. For “new dischargers,”⁸⁰ EPA generally sets effluent limitations for priority pollutants based on the type of pollutants likely to be present in the discharge, based on the category or type of facility involved (since they do not have discharge monitoring information).⁸¹ Consequently, the Region initially proposed effluent limitations for pollutants for the Facility, based on requirements that are applicable to POTWs with no industrial or commercial inputs.⁸² Consistent with standard practice, EPA also included in the Permit a requirement to conduct a priority pollutant scan within 90 days of commencing operations to confirm that no toxics were actually in the effluent at levels indicating reasonable potential to exceed water quality standards, and a reopener provision that allowed the Region to impose effluent limitations, if necessary.⁸³

As discussed above, the Tribe currently operates a wastewater treatment plant that is not regulated under the NPDES program and that uses a technology different from the one that will be used under the Permit. Although not required by the regulations,⁸⁴ the Region, based in part on comments received during the first public comment period,

⁸⁰ The Facility meets the definition of “new discharger,” as set forth in 40 C.F.R § 122.2.

⁸¹ AR at 1863 (EPA NPDES Permit Writers Manual at 75).

⁸² AR at 153 (Proposed Permit at 2).

⁸³ AR at 27 (Final Permit at 27).

⁸⁴ Conducting a priority pollutant scan is not required by 40 C.F.R. § 122.21(j), which sets forth the requirements for new POTWs.

required the Tribe to conduct a priority pollutant scan before a final permit would be issued. The Region recognized that a scan conducted with the current technology would have limited utility in assessing what the quality will be under the new, more technically rigorous treatment facility. Nevertheless, the Region required the scan because it believed that it would help the Region determine whether the discharge would have pollutants that have a reasonable potential to cause, or contribute to an excursion above any applicable standard for priority pollutants.

The Tribe hired BSK Analytical Laboratories, an independent California Department of Health Services certified environmental testing laboratory to conduct the priority pollutant scan prior to the issuance of the Final Permit. The results of the priority pollutant scan indicated that none of the constituents of THMs, i.e., bromoform, bromodichloromethane, chloroform, and dibromochloromethane, were detected in measurable quantities.⁸⁵

Based on the BSK laboratory results, the Region determined that there was no reasonable potential for THMs, and therefore did not include effluent limits for THMs in the permit. See 40 C.F.R. § 122.44(d)(1). Nevertheless, exercising the utmost caution, the Region included the additional priority pollutant scan within 90 days of the issuance of the permit, and if THMs are detected in this scan, the permit may be reopened to add appropriate limits and monitoring requirements for THMs.⁸⁶

⁸⁵ AR at 97-103 (Priority Pollutant Scan, Appendix A to Response to Comments at 3-4).

⁸⁶ AR at 3, 27 (Final Permit at 3, 27).

10. The Region properly addressed potential impacts on organic farmers and other downstream users

Petitioner MID requests that the Board exercise its discretion to review the Permit because Petitioner MID contends that the potential effects of the effluent authorized by the permit on organic farmers and other municipal and industrial users downstream users pose important policy considerations.⁸⁷

EPA's authority to establish effluent limits in NPDES permits derives from the CWA. See NRDC v. EPA, 859 F.2d at 169-70 ("EPA can properly take only those actions authorized by the CWA--allowing, prohibiting, or conditioning the pollutant discharge."); NRDC v. EPA, 822 F.2d at 129 ("EPA's jurisdiction [under the CWA] is limited to regulating the discharge of pollutants..."). Therefore, the Region addressed comments related to potential impacts on organic farmers and other downstream users pursuant to the CWA.

As discussed above, the Region imposed effluent limitations in the Permit based on all applicable and appropriate federal water quality standards and federally-approved State water quality standards. In this case, the State of California, through the RB5 Basin Plan, designates the beneficial uses for the waters downstream of the Facility. Included in these beneficial uses are agricultural and municipal/industrial uses that are protected by water quality standards composed of use designations, numeric and/or narrative water quality criteria. The Region included effluent limitations in the Permit based on the applicable requirements in the CTR and the RB5 Basin Plan, including those that protect agricultural and municipal/industrial uses. Therefore, the Region included all limitations authorized under and required by the CWA to protect such uses.

⁸⁷ MID Petition at 2.
NPDES Appeal Nos. 08-02; 08-03;
08-04; 08-05


To the extent that Petitioner MID believes that they raise policy issues worthy of Board review, the Petitioners fail to articulate how or why. Rather, the Petitioner simply asserts and concludes, without factual support, that “the discharge could have a detrimental effect on organic farmers and irrigation customers.”⁸⁸ Accordingly, given that the Board has repeatedly underscored, and the preamble to the Part 124 regulations makes clear that Board was intended to exercise its broad powers of review “only sparingly,” Region urges the Board to deny Petitioner’s vaguely written request for review based on policy considerations. Consolidated Permit Regulations: Final Rule, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); see also In re Rohm & Haas Co., 9 E.A.D. 499, 504 (EAB 2000).

IV. Conclusion

For the foregoing reasons, the Region submits that the Petitions should be dismissed in their entirety because the Petitioners have failed to carry the burden necessary to warrant review.

Respectfully submitted,

Dated: February ^{26th}, 2008


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⁸⁸ MID Petition at 4.

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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing **Response to Petitions for Review, Certification of Index to the Administrative Record, Index of the Administrative Record** and relevant portions of the **Administrative Record** in the matter of Chukchansi Gold Resort and Casino Wastewater Treatment Plant, NPDES Appeal Nos. 08-02, 08-03, 08-04, & 08-05, were hand delivered to:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

and copies of **Response to Petitions for Review, Certification of Index to the Administrative Record, and Index of the Administrative Record** were served by United States First Class Mail on:

Caroline A. Rodely First Class Mail
45323 Park Sierra Drive #412
Coarsegold, CA 93614

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Date: 2/28/08



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RECEIVED
U.S. E.P.A.

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

FEB 23 PM 4:19
ENVIR. APPEALS BOARD

In re: Chukchansi Gold Resort
And Casino Wastewater
Treatment Plant

NPDES Appeal Nos. 08-02, 08-03,
08-04, 08-05

NPDES Permit No. CA 0004009

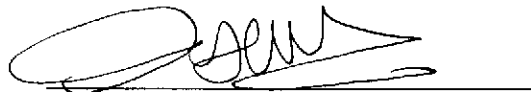
**Certification of Index to the
Administrative Record**

I, Gary Sheth, state the following:

1. I am a Permitting Officer in the Clean Water Act Standards and Permits Office of the U.S. Environmental Protection Agency, Region 9.
2. In my role as Permitting Officer, I oversaw the drafting and issuance of the NPDES Permit for the proposed Chukchansi Gold Resort and Casino Wastewater Treatment Plant.
3. Also in this role, I oversaw compilation of the administrative record of materials on which the EPA Region 9 Water Division Director, Alexis Strauss, based her decision to issue the NPDES Permit for the Chukchansi Gold Resort and Casino Wastewater Treatment Plant. The materials comprising the administrative record for this decision have been compiled, sequentially paginated, and listed in the attached Index to the Administrative Record.
4. I certify that, to the best of my knowledge, the documents listed in the attached Index constitute the complete administrative record for this permitting action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20 of February, 2008.



Gary Sheth
Permitting Officer
CWA Standards and Permits Office
U.S. EPA Region 9

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C.**

In re: Chukchansi Gold Resort
 and Casino Wastewater
 Treatment Plant
 NPDES Permit No. CA 0004009

NPDES Appeal Nos. 08-02, 08-03,
 08-04, 08-05

**Index to the Administrative
 Record**

A. FINAL PERMIT MATERIALS

Subject	Type	Date	From	To	Pages
Final Permit	Permit	12/04/07	-	-	0001-0036
Final Fact Sheet	Report	12/04/07	-	-	0037-0057
Permit Issuance	Letter	12/04/07	Doug Eberhardt, EPA	Sam Elizondo, Chukchansi with cc: to Loren Harlow RWQCB, Region 5, Susan Moore USFWS Sacramento Office, Jill Yaeger, Madera Co. Resource Mgmt. Sarah Ditrich, Office of Congressman George Radanovich.	0058-0059
Dear Interested party	Notice via email	12/07/07	Gary Sheth, EPA	Mailing list	0060-0061
Comment Response Document	Document	Final	-	-	0062-0096

Priority pollutant scan	Appendix A.	07/04/07	BSK Analytical Laboratories	-	0097-0103
Laboratory Certification	Letter	05/23/07	George C. Kulasingam, California Department of Health Services	Michael Berchmann, BSK Analytical Laboratories	0104-0114
Supplemental information on analysis requested and subcontracted	Report	07/04/07	BSK Analytical Laboratories	-	0115-0151

B. PROPOSED PERMIT MATERIALS

Subject	Type	Date	From	To	Pages
Proposed Permit	Permit	12/15/06	-	-	0152-0176
Draft Fact Sheet	Report	12/15/06	-	-	0177-0187
Revised Proposed Permit	Permit	03/20/07	-	-	0188-0220
Revised Draft Fact Sheet	Report	03/20/07	-	-	0221-0233
NPDES permit application	Application Forms	01/20/06	Chukchansi Gold Resort & Casino	-	0234-0279
General Inquiry Re: NPDES Permit	Email chain	02/02/06	Andrew Sallach, EPA	-	0280-0281
Follow-up Letter Re: Permit Status	Letter	04/14/06	Jill Yaeger, Madera County	John Tinger, EPA	0282
Supplemental Information	Email chain	09/25/06	Jack Niblett, Chukchansi	-	0283-0286
Supplemental information	Email chain	10/04/06	Gary Sheth, EPA	-	0287
Supplemental information	Email chain	10/16/06	Jack Niblett, Chukchansi	-	0288-0290
Supplemental Topo Map from Chukchansi	Email chain and map	05/02/07	Jack Niblett, Chukchansi	-	0291-0293
Subsurface Disposal of Wastewater Authorization	Letter	04/18/06	Aaron Setran, EPA	Sam Elizondo, Chukchansi	0294

Final On-Reservation Environmental Evaluation For the Chukchansi Gold Resort & Casino Expansion. Vol. I.	Report	06/09/06	Tierra Environmental Services for Chukchansi Gold Resort & Casino	-	0295-0396
Final On-Reservation Environmental Evaluation For the Chukchansi Gold Resort & Casino Expansion. Vol. II. Technical Appendices.	Report	06/09/06	Tierra Environmental Services for Chukchansi Gold Resort & Casino	-	0397-0753
Preliminary Drainage and Hydrology Report for the Chukchansi Hotel/Casino	Report	Feb. 2001	Summit Engineering Corp. for Chukchansi Gold Resort & Casino	-	0754-0815
Fresno River Nutrient Reduction Plan Final Report	Report	Dec. 2004	Madera County Engineering Dept.	-	0816-0980
Fresno River Nutrient Reduction Plan Addendum	Report	Jan. 2005	Madera County Engineering Dept.	-	0981-1012

C. PUBLIC NOTICE and HEARING MATERIALS

Subject	Type	Date	From	To	
Proposed Permit	Letter	12/27/06	Gary Sheth, EPA	Sam Elizondo, Chukchansi	1013
Proposed Permit	Letter	12/27/06	Gary Sheth, EPA	Jill Yaeger, Madera Co. Resource Mgmt. Agency	1014

Proposed Permit	Letter	12/27/06	Gary Sheth, EPA	W. Dale Harvey, RWQCB Central Valley Region	1015
Proposed Permit	Letter	12/27/06	Gary Sheth, EPA	Susan Moore, USFWS Sacramento Office	1016
Notice of proposed action and proof of publication	Notice	12/22/07	-	-	1017
Dear Interested party – proposed permit	Email	1/03/07	Gary Sheth, EPA	Jill Yaeger	1018
Proposed Permit	Letter	03/23/07	Gary Sheth, EPA	Susan Moore, USFWS Sacramento Office	1019
Notice of proposed action and proof of publication	Notice	3/23/07	-	-	1020
Dear Interested party – proposed permit – Public Workshop and Hearing	Email	3/27/07	Gary Sheth, EPA	Mailing list	1021-1022
Informational Sheet for public hearing		4/26/07	-	-	1023

D. COMMENTS RECEIVED

Document	Date	Pages
Reporter Transcript of EPA Public Workshop and Hearing	4/26/07	1024-1082
Written Comments Received at Public Hearing including: Alan Rodely 1 and 2, Caroline Rodely, Michael Grey, Bob Odell, Bill Wilbur, William Whitehead, Wayne & Maria Carpenter	4/26/07	1083-1098
Written Comments Received during comment period, but not during Public Hearing	Various	1099-1270
Commenter	Signed by	Comments Dated

001	Congressman George Radanovich	Congressman George Radanovich	05/01/07
002	California Regional Water Quality Control Board Central Valley Region	Loren J. Harlow	03/08/07
003	County of Madera Resource Management Agency, Environmental Health Department	Jill Yaeger	01/19/07 and 05/07/07
004	Madera Irrigation District	Stoel Rives LLP, Michael A. Campos	01/22/07 and 04/09/07
005	Divirgilio Tarigo LLC	Robert H. Divirgilio	05/07/07
006	California Save Our Streams Council	Lloyd Carter	01/22/07
007	Jo Anne Kipps	-	01/21/07 and 04/27/07 and 05/08/07
008	Mary Anna McKinley	-	05/08/07
009	Larry & Karen Null	-	05/07/07
010	Bruce Gray	-	05/07/07
011	Dale Drozen	-	04/26/07
012	Polly Hayes	-	02/21/07
013	Ginger Julian	-	02/21/07
014	Robert Novak	-	04/27/07
015	Alan Rodely	-	03/24/07 and 05/05/07
016	Caroline Rodely	-	2/06/07, 2/15/07 and 5/06/07
017	Austin & Judith Maynard # 353	-	02/11/07
018	(Verna?) Erikson # 420	-	02/09/07
019	Jack Erikson # 420	-	02/06/07
020	Barbara Ellis # 246	-	02/06/07
021	(Arlene Hampton?) # 411	-	02/06/07
022	(Steve P. Hampton?) # 411	-	02/06/07
023	Myrtle Jackson #547	-	02/06/07

024	Robert Jackson # 547	-	02/06/07
025	Gene Dunkin # 516	-	02/06/07
026	Peggy J. Dunkin # 516	-	02/06/07
027	Clare Goodrich # 422	-	02/06/07
028	(Ree?) Whitford # 202	-	02/06/07
029	(Dennison?) Whitford # 202	-	02/06/07
030	(Jack Clift?) # 439	-	02/06/07
031	Doris Clift # 439	-	02/06/07
032	Roy Goodrich # 422	-	02/06/07
033	Barbara Martin # 240	-	02/06/07
034	Mary Bermke # 429	-	02/06/07
035	Ronald E. Jones # 117	-	02/06/07
036	Liuca Peacock # 249	-	02/06/07
037	Paul R. Peacock #249	-	02/06/07
038	(Frank Collander?) # 311	-	02/06/07
039	Harley & Phyllis Jackson # 304	-	02/06/07
040	(Maynard Magee?) # 123	-	02/06/07
041	Roderick Crane # 236	-	02/06/07
042	Gerda Crane # 236	-	02/06/07
043	Charlotte Maddox # 524	-	02/06/07
044	Darrell Maddox # 524	-	02/06/07
045	(Dennis L. Keaney) # 121	-	02/06/07
046	(Sandra J. Keaney) # 121	-	02/06/07
047	Emilio Gomez # 566	-	02/07/07
048	Devora J. Gomez # 566	-	02/07/07
049	Robert & Regina Orazem	-	02/09/07
050	David Ellis	-	02/08/07
051	Stan Sullivan # 340	-	02/06/07
052	Wilma Atkins # 238	-	02/06/07
053	(Ed George?) # 438	-	02/06/07
054	(Claribell Wilbur?) # 122	-	02/06/07
055	Bob & Carol Cessna # 542	-	02/06/07
056	Mr. & Mrs. Roland Blasé # 308	-	02/06/07
057	Riley Garcia # 403	-	02/06/07
058	Bonnie-Jean Garcia # 403	-	02/06/07
059	James Hogate # 108	-	02/06/07
060	Mary L. Hogate # 108	-	02/06/07
061	(Virginia Lang Huber?) # 506	-	02/06/07

062	Jean Bowman # 336	-	02/06/07
063	Georgia Bielik # 313	-	02/07/07
064	Albert Beilik # 313	-	02/06/07
065	(Jane Donolo?) # 556	-	02/06/07
066	(Robert Donolo?) #556		02/06/07
067	Milton Anderson # 217	-	02/06/07
068	Janice J. Anderson # 217	-	02/06/07
069	Ken & Sherry Faulkner # 552	-	02/06/07
070	Billie Martin # 567	-	02/06/07
071	Tommy W. Martin # 567	-	02/06/07
072	(Ruth Michaelson?) # 324	-	02/06/07
073	Jessie Simpson # 404	-	02/06/07
074	James Simpson # 404	-	02/06/07
075	Edgar & Lurene Refsell # 448	-	02/06/07
076	Virginia Woodruff # 431	-	02/06/07
077	Donald Woodruff # 431	-	02/06/07
078	(Joseph P. Schnieder?) # 254	-	02/06/07
079	Beverly Humphrey #550	-	02/06/07
080	John T. Rankin # 569	-	02/06/07
081	Grace M. Rankin # 569	-	02/06/07
082	(Evelyn Wilke?) #106	-	02/06/07
083	Mary Turner # 451	-	02/06/07
084	(Sam Turner?) # 451	-	02/06/07
085	Diane Bartlett # 115	-	02/06/07
086	John Byrne # 346	-	02/06/07
087	Geneva Byrne # 346	-	02/06/07
088	Loren Epperson # 309	-	02/06/07
089	Alberta Epperson # 309	-	02/06/07
090	Elsie Fraer # 571	-	02/06/07
091	Carl Fraer # 571	-	02/06/07
092	(John Werness?) # 348	-	02/06/07
093	Doris A. Chandler # 558	-	02/06/07
094	Harold Chandler # 558	-	02/06/07
095	Marianne A. Seals # 549	-	02/06/07
096	Travis J. Seals # 549	-	02/06/07
097	Barbara H. & Joseph W. Wood # 343	-	02/06/07
098	Geraldine Waggoner # 243	-	02/06/07
099	Clayton Waggoner # 243	-	02/06/07
100	Lynn Riemer # 437	-	02/06/07

101	Micha Riemer # 437	-	02/06/07
102	Janet Burr # 117	-	02/06/07
103	Carolyn & Ron Kimpton # 536	-	02/06/07
104	Sandra & Robert Hendrick # 251	-	02/06/07
105	(Barbara Morris?) # 501	-	02/06/07
106	Janice Ryder # 350	-	02/06/07
107	Ken Ryder # 350	-	02/06/07
108	Diana White # 410	-	02/06/07
109	Lois Williams # 419	-	02/06/07
110	Doris Ward # 572	-	02/06/07
111	Marie Reimer # 508	-	02/06/07
112	(Irwin Reimer?) # 508	-	02/06/07
113	Leona J. Lisk # 124	-	02/06/07
114	Todd Bowman # 336	-	02/06/07
115	Lalah Smith # 310	-	02/06/07
116	(Laurence J. Schuerer?) # 545	-	02/06/07
117	Mary Lou Phillips # 220	-	02/06/07
118	Kenneth L. Kimpton # 536	-	02/06/07
119	Virginia Odell # 244	-	02/06/07
120	(Ayeree Gibson?) # 215	-	02/06/07
121	(Nancy L. Lindgrene?) #211	-	02/06/07
122	(W Wilbur?) # 122	-	02/06/07
123	Brenda Henry # 435	-	02/07/07
124	(Unreadable) # 501	-	02/06/07
125	Robert Odell # 244	-	02/06/07
126	(Unreadable) # 344	-	02/06/07
127	(Unreadable) # 402	-	02/06/07

E. BIOLOGICAL AND CULTURAL RESOURCE EVALUATION

Subject	Type	Date	From	To	Pages
Review of Information and Literature Pursuant to ESA	Memorandum	11/30/07	Gary Sheth, EPA	Record	1271-1275

Species list cover letter Document # 070909015617	Letter	9/09/07	Endangered Species Division USFWS, Sacramento	Gary Sheth, EPA	1276-1277
Species list Document # 070909015617	List	9/9/07	Endangered Species Division USFWS, Sacramento	Gary Sheth, EPA	01278-1282
Biological Resources Report Appendix C.	Report	6/22/01	Monk & Associates LLC	Picayune Racheria of Chukchansi Indians	1283-1361
Final On-Reservation Environmental Evaluation For the Chukchansi Gold Resort & Casino Expansion.	Report	6/09/06 See Section B. above	Tierra Environmental Services for Chukchansi Gold Resort & Casino	-	0295-0396
Final On-Reservation Environmental Evaluation For the Chukchansi Gold Resort & Casino Expansion. Vol II.	Report	6/09/06 See Section B. above	Tierra Environmental Services for Chukchansi Gold Resort & Casino	-	0397-0753
California Red-Legged Frog Assessment	Report	6/30/06	Monk & Associates Inc.	North Fork Associates	1362-1377
Final Rule: Red-Legged Frog	Final Rule	5/23/96	USFWS	Federal Register	1378-1413
Final Rule: Red-Legged Frog Designation of Critical Habitat	Final Rule	4/13/06	USFWS	Federal Register	1414-1423

Background and Q&A's Critical habitat for California red-legged frog	News Release	4/13/06	USFWS, Sacramento Office, External Affairs	-	1424-1430
Madera County California Red-Legged and Yellow-Legged Frog Recovery and Conservation Plan/Program	Guidance	12/18/06	Coarsegold Resource Conservation District	County Plan	1431-1433
Valley Elderberry Longhorn Beetle 5-Year Review	Report	9/2006	USFWS Sacramento Office	-	1434-1468
Initiation of formal consultation pursuant to the ESA for Construction of Chukchansi Casino/Hotel	Letter	11/6/00	Christine Nagel, NEPA Coordinator, National Indian Gaming Commission	Karen Miller, Endangered Species Section Chief USFWS, Sacramento Office	1469-1473
Final Rule: Listing the Elderberry Longhorn Beetle	Final Rule	8/08/80	USFWS	Federal Register	1474-1491
Final Rule: Designation of Critical Habitat for 4 Vernal Pool crustaceans and 11 plants	Final Rule	3/8/05	USFWS	Federal Register	1492-1488
Non-economic exclusions for critical habitat for vernal pool species	News Release	3/8/05	USFWS, External Affairs, Sacramento Office	-	1489-1491

Re-evaluation of Critical Habitat for 4 freshwater shrimp and 11 plants	News Release	8/11/05	USFWS, External Affairs Program, Sacramento Office	-	1492-1496
California Tiger Salamander Species Account	Report	8/23/05	USFWS, Sacramento Office	-	1497-1500
Recovery Plan for the Lahontan Cutthroat Trout	Report	1/30/95	USFWS, Region 1, Portland, Oregon	-	1501-1507
Revised Recovery Plan for the Paiute Cutthroat Trout	Report	8/10/04	USFWS, Region 1, Portland Oregon	-	1508-1515
Federal Register Notices for Madera County listed T & E Species from the USFWS' TESS Website	Final Rules	Various	USFWS	-	1516-1642
Cultural Resources Inventory Report	Report: Note: Contains Confidential Information	10/2000	Basin Research Associates, Inc.	Chukchansi Gold Resort & Casino	Confidential

F. CORRESPONDENCE DURING COMMENT PERIOD

Subject	Type	Date	From	To	Pages
Permit	letter	5/22/07	Alexis Strauss, EPA	Congressman Radanovich	1643
Permit	letter	5/1/07	Congressman Radanovich	Gary Sheth, EPA	1644-1645
Permit	letter	3/22/07	Alan Rodely	Congressman Radanovich	1646-1647

Permit	Email chain	1/22/07	Marilyn Sykes, Stoel Rives LLP	-	1648-1651
Permit. Confirming receipt of comments	Email chain	1/23/07	Gary Sheth, EPA	Marilyn Sykes, Stoel Rives LLP	1652
Permit KSFN Story on NPDES permit	Email chain	1/24/07 to 1/25/07	Various	-	1653-1657
Permit. Confirming receipt of comments	Email chain	1/25/07	Gary Sheth, EPA	Jill Yaeger, County of Madera	1658-1659
Permit.	Letter	1/31/07	Alan Rodely	Editor, Sierra Star	1660-1661
Permit. Newspaper story on NPDES Permit	Email chain	02/05/07	Mike Grossi, Fresno Bee	Gary Sheth, EPA	1662-1664
Permit. Request for information	Email chain	02/05/07	Andy Gordus, California Dept. of Fish and Game	Gary Sheth, EPA	1665-1666
Permit.	Email	02/05/07	Robert W. Odell	Nancy Yoshikawa	1667
Permit. Request for information	Email chain	02/06/07	Gary Sheth, EPA	E. Gabriel, Sierra Star	1668-1669
Permit. Story In Fresno Bee	Email chain & attached newspaper story	02/08/07	Gary Sheth, EPA	Various	1670-1673
Permit. Request for information	Email chain	2/14/07	Doug Eberhardt, EPA	Various	1674-1675
Permit. Chukchansi complaint to EPA	Email chain	2/14/07	Kirstin Gullatt, EPA	Various	1676-1680
Permit. Request for Public Hearing	Email chain	2/15/07	Marilyn Sykes, Stoel Rives LLP	Gary Sheth, EPA	1681-1683

Permit. Request for copy	Email	2/16/07	Ken Kranson	Gary Sheth, EPA	1684
Permit Public Notice and Hearing	Email	2/16/07	Jill Yaeger, Madera County	Gary Sheth, EPA	1685
Permit. Public Hearing	Email	2/19/07	Jack Niblett, Chukchansi	Gary Sheth, EPA	1686
Permit. Request for information	Email chain	2/21/07	Bruce Gray	Gary Sheth, EPA	1687-1688
Permit. Confirm receipt of comments	Email chain	2/22/07	Gary Sheth, EPA	Lloyd Carter, California Save Our Streams Council	1689
Permit. Pub. Notice. Request for information	Email chain	2/26/07	Cathy Corey	Various	1690-1696
Permit. Mailing List	Email	3/05/07	Gary Sheth, EPA	Steven Olsen	1697
Permit. Public Notice and Hearing	Email chain	04/04/07	Gary Sheth, EPA	Robert H. DiVirgilio	1698-1699
Permit. Request for information	Email chain	04/15/07	Gary Sheth, EPA	Barbara Whitehead	1700
Permit. Request for information	Email chain	04/15/07	Gary Sheth, EPA	Jo Anne Kipps	1701
Permit. Request for information	Email chain	04/15/07	Gary Sheth, EPA	Dale Drozen	1702-1703
Permit. Request for information	Email chain	04/15/07	Gary Sheth, EPA	Melissa Verhaag, Stoel Rives	1704-1705
Permit. Request for information	Email chain	04/25/07	Gary Sheth, EPA	Mary Anna McKinley	1706-1707
Permit. Request for information	Email chain	04/30/07	Chris Valdez	Gary Sheth, EPA	1708-1715

Permit. Request for information	Email chain	05/04/07	Gary Sheth, EPA	Robert H. DiVirgilio	1716-1717
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G. CORRESPONDENCE AFTER CLOSE OF COMMENT PERIOD

Subject	Type	Date	From	To	Pages
Permit. Request for information	Email chain	05/17/07	Gary Sheth, EPA	Glenna Jarvis, Legislative Asst., Madera County Dist.2	1718-1719
Permit. Additional Comments	Email chain	06/07/07	Gary Sheth, EPA	Steven Olsen	1720-1723
Permit. Request for status	Email chain	07/16/07	Jill Yaeger, Madera County	Gary Sheth, EPA	1724-1725
Permit. Request for information	Email chain	07/18/07	Gary Sheth, EPA	Various	1726-1727
Permit. Request for status	Email chain	07/30/07	Gary Sheth, EPA	Cathy Corey	1728-1729
Permit Inquiry of Status.	Letter	09/12/07	Dustin Graham, Chairman Chukchansi	Gary Sheth, EPA	1730
Permit Notice on EPA Website	Email chain	12/10/07	Lisa Honor, EPA	Gary Sheth, EPA	1731-1734
Request for copy of Permit Appeals	Email chain	01/17/08	Samuel Elizondo, Chukchansi	Gary Sheth, EPA	1735-1736
Response to Request for copy of Permit Appeals	Letter and Attachments	01/22/08	Gary Sheth, EPA	Samuel Elizondo, Chukchansi	1737-1760

H. REFERENCE MATERIALS

Title	Date	Pages
RWQCB Basin Plan Region 5. (Excerpts)	12/1994	1761-1843
RWQCB Basin Plan Region 1. (Excerpts)	1/2007	1844-1853
EPA NPDES Permit Writers Manual (EPA-833-B-96-003) (Excerpts)	12/1996	1854-1870
EPA Technical Support Document For Water Quality Based Toxics Control (EPA/505/2-90-001) (Excerpts)	03/1991	1871-1928
California Code of Regulations Title 22, Water Recycling Criteria.	11/03/2000	1929-1938
303(d) List of Impaired Waters (Excerpts)	2002	1939-1940
Permit & Statement of Basis (Appeal Pending before EAB). Permit No. CA 0005241. Dry Creek Rancheria Wastewater Treatment Plant.	4/30/2007	1941-1983
Permits Issued by the RWQCB Region 5. NPDES Permit No. CA0084697. Auburn Rancheria Casino Wastewater Treatment Plant	3/17/2005	1984-2026
Permits Issued by the RWQCB Region 5. NPDES Permit No. CA0083577. Oakhurst Wastewater Treatment Facility	4/30/1999, rescinded 3/17/2000	2027-2065
Technical articles reviewed. EPA Wastewater Technology Fact Sheet Sequencing Batch Reactors	September 1999	2066-2074
Technical articles reviewed. EPA Wastewater Management Fact Sheet Membrane Bioreactors	September 2007	2075-2083
Newspaper article reviewed. Chukchansi water plans protested – Fresno Bee	2/08/2007	2084-2086
Newspaper article reviewed. Chukchansi, county settle lawsuits – Sierra Star	2/17/2007	2087-2089
Ambient Water Quality Criteria Recommendations. Information Supporting the Development of State and Tribal Nutrient Criteria. Rivers and Streams in Nutrient Ecoregion 1. (EPA 822-B-01-012) (Excerpts)	December 2001	2090-2128