UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

In reply, refer to WTR-5

Certified Mail No.7003 2260 0000 8873 1247

JUN 22 2010

Ms. Rhonda Pope
Tribal Chairperson
Buena Vista Rancheria
P.O. Box 162283
Sacramento, CA 95814

Re: Issuance of NPDES Permit No. CA 0049675 to the Buena Vista Rancheria

Dear Ms. Pope:

Please find enclosed the final National Pollutant Discharge Elimination System (NPDES) permit for the Buena Vista Casino, along with the final Fact Sheet and Comment Response Document. EPA first issued a public notice of proposed action on December 21, 2005 and issued a subsequent public notice on August 5, 2009. The State Historic Preservation Officer executed a Memorandum of Agreement among the U.S. EPA, the U.S. Army Corps of Engineers, and the Buena Vista Rancheria of Me-Wuk Indians to conclude EPA's consultation under the National Historic Preservation Act. During the public comment periods, EPA received comments from approximately 30 parties both in writing and in public testimony.

Within 33 days of this notice, any person who filed comments on the proposed permit conditions may petition the Environmental Appeals Board (EAB) to review the conditions of the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period and a showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the EAB should, in its discretion, review. See 40 C.F.R. § § 124,19(a) and 124.20(d).

40 C.F.R. § 124.60 (b)(1) states that, as provided in 40 C.F.R. § 124.16 (a), if an appeal of an initial permit decision is filed under Section 124.19 of this Part, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under 40 C.F.R. § 124.19 (f). In accordance with 40 C.F.R. § 124.16 (a)(1), "[i]f the permit involves a . . . new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new . . . source or discharger pending final agency action." Please review 40 C.F.R. §124 and the revisions at 65 Fed. Reg. 30886 for a complete description of the requirements regarding appeal of NPDES permits.

If you have any questions regarding the procedures outlined above, or if you would like to review or request any documents from the Administrative Record, please contact me at (415) 972- 3420 or contact John Tinger of my staff at (415) 972-3518 or e-mail at Tinger.John@epa.gov.

Sincerely,

David W. Smith, Manager
NPDES Permits Office

Enclosures (3):
Final Permit
Final Fact Sheet
Comment Response Document

CC: w/attachments

Martha Jeanne Shaver
Amador County Counsel
5000 Argonaut Lane
Jackson, CA 95642

Dale Harvey,
RWQCB, Fresno Branch Office
1685 "E" Street
Fresno, CA 93706-2020

Mr. Matthew Franklin
Chairman, Ione Band of Miwok Indians
14 West Main St. P.O. Box 1190
Ione, CA 95640

Friends of Amador County
6383 Jackson Valley Road
Ione, CA 95640

CC: w/o attachments and/or via email
Buena Vista Mailing Lists

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

NPDES PERMIT NO. CA0049675

In compliance with the provisions of the Clean Water Act ("CWA") (Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.), the following discharger is authorized to discharge from the identified facility at the outfall location(s) specified below, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in this permit and in the attached EPA Region 9 "Standard Federal NPDES Permit Conditions," dated June 3, 2002.

Discharger Name	Buena Vista Rancheria
Discharger Address	P.O. Box 162283
	Sacramento, CA 95640
Facility Name	Buena Vista Casino Wastewater Treatment Plant
Facility Location Address	4650 Coal Mine Road
	Ione, CA

Outfall Number	General Type of Waste Discharged	Outfall Latitude	Outfall Longitude	Receiving Water
001	Tertiary treated domestic wastewater	N. 38° 16' 23"	W. 120° 54' 36"	Unnamed Tributary to Jackson Creek

This permit was issued on:	6/25/2010
This permit shall become effective on:	8/1/2010
This permit shall expire at midnight on:	7/31/2015
In accordance with 40 CFR 122.21(d), the discharger shall submit a new application for a permit at least 180 days before the expiration date of this permit, unless permission for a date no later than the permit expiration date has been granted by the Director.	

Signed this 22nd day of June, 2010, for the Regional Administrator.

Alexis Strauss, Director
Water Division

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Part I EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Buena Vista Rancheria ("permittee") is authorized to discharge treated wastewater from Outfall 001 as specified in Table 1 below:

Table 1: Effluent Limitations and Monitoring Requirements

Parameter	Maximum Allowable Discharge Limitations						Monitoring Requirements	
	Mass Limits			Concentration Limits				
	Average Monthly	Average Weekly	Daily Maximum	Average Monthly	Average Weekly	Daily Maximum		
Flow	----	----	----	0.1 mgd	----	0.2 mgd	Continuous	meter
Ammonia (Total, as N)	1.43 lbs/day	----	5.75 lbs/day	1.72 mg/L	----	3.45 mg/L	Once/week	Composite
Biochemical Oxygen Demand (1)	25 lbs/day	75 lbs/day	----	30 mg/L	45 mg/L	---	Once/week	Composite
Electrical Conductivity	----	-----	-----	(3)	----	(3)	Once/week	Discrete
Total Coliform Bacteria	----	----	----	----	(4)	23 MPN/ 100 ml	Once/week or Once/day (5)	Discrete
Nitrate (measured as N)	8.3 lbs/day	----	----	10 mg/L	----	----	Once/week	Composite
Oil and Grease	8.3 lbs/day	----	25 lbs/day	10 mg/L	----	15 mg/L	Once/week	Discrete
Settleable Solids	----	----	----	0.1 ml/L	----	0.2 ml/L	Once/week	Discrete
Total Suspended Solids (1)	25 lbs/day	75 lbs/day	----	30 mg/L	45 mg/L	---	Once/week	Composite
Total Dissolved Solids	(3)	-----	(3)	(3)	-----	(3)	Once/week	Composite
Total Residual Chlorine (6)	----	----	----	0.01 mg/L	----	0.02 mg/L	Once/week	Composite
Turbidity (2)	----	----	----	2 NTU	----	5 NTU	Once/week or Continuous (5)	Discrete
Whole Effluent Toxicity, Chronic	----	----	----	(3)	----	(3)	1st, 3rd, 5th year	Composite
Priority Pollutants	----	----	----	(3)	----	(3)	1st, 3rd, 5th year	Composite
pH	The pH shall not be depressed below 6.5 nor raised above 8.5. Changes in normal ambient pH levels shall not exceed 0.5						Once/day	Discrete

Footnotes to Table 1: (see Next Page)

Footnotes to Table 1:

(1) Both the influent and the effluent shall be monitored for Biochemical Oxygen Demand (5-day) and Total Suspended Solids by concentration. The arithmetic mean of effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected over the same time period. (i.e., Must demonstrate 85% removal of BOD and TSS).

(2) The daily average turbidity shall not exceed 2 NTU. Turbidity shall not exceed 5 NTU more than 5 percent of the time within a 24-hour period. At no time shall the turbidity exceed 10 NTU.

(3) Monitoring and reporting required. No limit set at this time.

(4) Total Coliform Bacteria shall not exceed 2.2 MPN/ 100 ml as a weekly median.

(5) Reclaimed water must be monitored continuously for Turbidity and once per day for Total Coliform Bacteria.

(6) The operator shall maintain an on-site log of all chlorine dosage rates applied to the effluent discharge.

B. Additional Monitoring Requirements

1. The permittee shall conduct effluent monitoring for the following parameters once during the first 90 days of discharge from the new wastewater treatment plant and in the 3rd and 5th year of the permit term.

Priority Toxics Pollutants. The permittee shall monitor for the full list of priority pollutants as listed in the Code of Federal Regulations (CFR) at 40 CFR Part 122 Appendix J, Table 2.

Hardness ($CaCO_3$). The permittee shall monitor for hardness in addition to priority pollutants.

Chronic Toxicity. The requirements for chronic toxicity are specified in Part IV of this permit.

2. The permittee shall conduct weekly receiving water quality monitoring for pH, dissolved oxygen, turbidity, total dissolved solids, and temperature at the following locations when water is present in the receiving water:

M001U - Outfall 001 Upstream: Approximately 10' upstream of location where discharge enters receiving water.

M001D - Outfall 001 Downstream: Approximately 100' downstream of location where discharge enters receiving water.

C. The discharge shall not cause the following in unnamed receiving waters immediately downstream of the discharge:

1. The fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, to exceed a geometric mean of 200 MPN/100 mg/L or cause more than 10 percent of total samples taken during any 30-day period to exceed 400 MPN/100 mg/L.

2. Biostimulatory substances that promote aquatic growths in concentrations that cause nuisance or adversely affect beneficial uses.

3. Aesthetically undesirable discoloration.

4. Concentrations of dissolved oxygen to fall below 7.0 mg/L. The monthly median of the mean daily dissolved oxygen concentration shall not fall below 85 percent of saturation in the main water mass, and the 95th percentile concentration shall not fall below 75 percent of saturation.

5. Floating material to be present in amounts that cause nuisance or adversely affect beneficial uses.

6. Oils, greases, waxes, or other materials to accumulate in concentrations that cause nuisance, result in a visible film or coating on the water surface or on objects in the water, or that otherwise adversely affect beneficial uses.

7. The ambient pH to fall below 6.5, exceed 8.5, or change by more than 0.5 units. A one-month averaging period may be applied when calculating the pH change of 0.5 units.

8. Radionuclides to be present in concentrations that harm human, plant, animal or aquatic life; or that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life.

9. Deposition of material that causes nuisance or adversely affects beneficial uses.

10. Taste- or odor-producing substances to impart undesirable tastes or odors to domestic or municipal water supplies or to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses.

11. The ambient temperature to increase more than 5°F.

12. Toxic pollutants to be present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health.

13. The turbidity to increase as follows:

i. More than 1 Nephelometric Turbidity Units (NTUs) where natural turbidity is between 0 and 5 NTUs.
ii. More than 20 percent where natural turbidity is between 5 and 50 NTUs.
iii More than 10 NTUs where natural turbidity is between 50 and 100 NTUs.
iv. More than 10 percent where natural turbidity is greater than 100 NTUs.

14. Aquatic communities and populations, including vertebrate, invertebrate, and plant species, to be degraded.

Part II. SPECIAL CONDITIONS

A. Erosion Protection

The permittee shall design and install erosion protection measures to prevent erosion from the discharge point to receiving water. The erosion protection measures shall be designed to protect adjacent wetlands from harm.

B. Reporting of Capacity Attainment and Planning

The permittee shall file a written report with EPA within ninety (90) days after the average dry-weather waste flow for any month either equals or exceeds 90 percent of the annual dry weather design capacity of the waste treatment and/or disposal facilities. The permittee's senior administrative officer shall sign a letter which transmits that report and certifies that the policy-making body is adequately informed about it. The report shall include:

1. Average daily flow for the month, the date on which the instantaneous peak flow occurred, the rate of that peak flow, and the total flow for the day.

2. The permittee's best estimate of when the average daily dry weather flow rate will equal or exceed the design capacity of the facilities.

3. The permittee's intended schedule for the studies, design, and other steps needed to provide additional capacity for the waste treatment and/or disposal facilities before the waste flow rate equals the capacity of present facilities.

C. Reclaimed Water Limitations

1. Reclaimed water used for irrigation and interior water shall meet the criteria contained in Title 22, California Code of Regulations.

2. Reclaimed water shall be monitored continuously for turbidity and once per day for total coliform.

3. All reclamation equipment, pumps, pipings, valves, and outlets shall be appropriately marked to differentiate them from potable facilities. All reclamation distribution system piping shall be purple or adequately wrapped with purple tape.

4. All use areas where recycled water is used that are accessible to the public shall be posted with signs that are visible to the public, in a size no less than 4 inches high by 8 inches wide, that include the following wording: "Recycled Water - Do Not Drink" and the international symbol for non-potable water.

5. No physical connection shall be made or allowed to exist between any system and any separate system conveying potable water except as allowed under section 7604 of title 17, California Code of Regulations.

6. Direct or windblown spray of reclaimed water shall be confined to the designated

land application area and shall be prevented from entering outdoor eating areas, dwellings, drinking water facilities, food handling facilities, and other locations where the public may be present. In addition, direct or windblown spray of reclaimed water shall not enter surface watercourses.

7. Application of wastewater to land shall not be performed within 24 hours before a forecasted storm, during precipitation, or within 24 hours after any precipitation event, nor when the ground is saturated.

8. Areas irrigated with reclaimed water shall be managed to prevent breeding of mosquitoes. More specifically:

a. All applied irrigation water must infiltrate completely within 24 hours.

b. Ditches not serving as wildlife habitat should be maintained free of emergent, marginal, and floating vegetation.

c. Low-pressure and un-pressurized pipelines and ditches which are accessible to mosquitoes shall not be used to store reclaimed water.

9. A 15-foot buffer zone shall be maintained between any watercourse and the wetted area produced during land application of effluent.

10. A 50-foot buffer zone shall be maintained between any spring, domestic well or irrigation well and the wetted area produced during land application of effluent.

D. Reopener

This permit may be modified in accordance with the requirements set forth at 40 CFR Parts 122 and 124, to include appropriate conditions or limits to address demonstrated effluent toxicity based on newly available information, or to implement any EPA-approved new State or Tribal water quality standards.

Part III. MONITORING AND REPORTING

A. Sample locations

Samples taken in compliance with the monitoring requirements specified in Part I, Section A, above, shall be taken at the following location(s):

1. Influent samples shall be taken after the last addition to the collection system prior to treatment.

2.Effluent samples shall be taken downstream from the last treatment process. Samples may be taken prior to UV disinfection where a representative sample will be obtained.

B. Reporting of Monitoring Results

1. Monitoring results obtained during the month shall be submitted on forms to be supplied by the Regional Administrator, to the extent that the information reported may be entered on the forms. The results of all monitoring required by this permit shall be submitted in such a format as to allow direct comparison with the limitations and requirements of the permit. Unless otherwise specified, discharge flows shall be reported in terms of the average flow over each monthly period and the maximum daily flow over that monthly period. If there is no discharge during the month, the reporting form shall be marked "No Discharge" and submitted in accordance with this section. Each monthly report is due by the 28th of the following month, i.e. January report is due by February 28. Duplicate signed copies of these, and all other reports required herein, shall be submitted to EPA at the following address:

U.S. EPA Region IX
NPDES/DMR, WTR-7
75 Hawthorne Street
San Francisco, California 94105-3901

As an alternative to reporting DMRs as described above, the permittee has the option to submit all monitoring results in the electronic reporting format approved by U.S. EPA. The permittee may submit DMRs electronically using EPA's NetDMR application.

2. Where quarterly monitoring is required for a continuous discharge, samples shall be taken during the months of January, April, July and October.

3. For effluent analyses, the permittee shall utilize an analytical method with the published Method Detection Limit (MDL, as defined in Appendix A of this permit) that is lower than the effluent limitations (or lower than EPA's nationally recommended water quality criteria). If all published MDLs are higher than effluent limitations or water quality criteria concentrations, the permittee shall utilize the EPA approved analytical method with the lowest published MDL. In accordance with 40 CFR 122.45(c), effluent analyses for metals shall measure "total recoverable metals".

4. For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's MDL[1]. As such the permittee or its laboratory must utilize a standard calibration where the lowest standard point is equal to or less than the minimum level (ML), as defined in Appendix A of this permit.

For analytical results greater than the laboratory's MDL and less than the ML, the permittee shall report No Discharge/No Data (Not Quantifiable) ["NODI(Q)"] on the DMR form. Analytical results below the laboratory's MDL shall be reported as No Discharge/No Data (Below Detection Level) ["NODI(B)"].

As an attachment to the first DMR form submitted following the effective date of this permit, and at any time thereafter that the following information should change, the permittee shall report for all parameters with monitoring requirements: the analytical result; the analytical method number or title, preparation and analytical procedure, and published MDL; the laboratory MDL, standard deviation (S) from the laboratory's MDL study (see 40 CFR Part 136, Appendix B), and the number of replicate analyses used to compute the laboratory's MDL (n); and ML.

When requested by EPA, the permittee or its laboratory shall participate in the NPDES DMR-QA performance study and shall submit their study results to EPA. The permittee must have a success rate of at least 80 percent (%).

5. Quality Assurance (QA) Manual
Sample collection will be performed as stated in the Quality Assurance (QA) Manual/QA Plan.

The permittee shall develop a QA Manual/QA Plan for collection and analysis of samples. If the water samples are analyzed by an independent laboratory, the permittee shall ensure that the laboratory has a Quality Assurance (QA) Manual.

The purpose of the QA Manual is to assist in planning for the collection and analysis of samples and explaining data anomalies if they occur. As appropriate and applicable, the QA Manual shall include the details enumerated below. The QA Manual shall be

[1] Because MLs and MDLs specified in or approved under 40 CFR 136 are generally determined by the EPA using reagent water, matrix interferences in some wastewaters may result in a permittee being unable to achieve a required ML. In other cases, inappropriate laboratory techniques and poor quality assurance/quality control (QA/QC) procedures will result in a permittee failing to achieve a required ML. To distinguish between cases where a ML (or MDL) is not achieved due to poor laboratory technique and when matrix interferences do, in fact, occur, and to document that a discharge-specific MDL and ML are warranted, a permittee attempting to overcome matrix interference problems shall follow guidelines provided in *Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring* (EPA 821-B-93-001, June 1993). In such a case, the permittee shall submit a report to EPA documenting that a discharge-specific MDL is warranted. Upon approval of this report by EPA, the permittee shall follow procedures set forth in 40 CFR 136, Appendix B, to determine the discharge-specific MDL and ML, which are also subject to EPA evaluation and approval. Additional guidance on development and review of discharge-specific MDLs is available in EPA's draft National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantitative Levels, March 22, 1994, Appendix B.

retained on the permittee's premises and be available for review by EPA upon request. The permittee or the independent laboratory as the case may be shall review its QA Manual annually and revise it when appropriate. Throughout all field sampling and laboratory analyses, the permittee or the laboratory shall use quality assurance/quality control (QA/QC) procedures as documented in their QA Manual.

(i) Project Management including roles and responsibilities of the participants; purpose of sample collection; matrix to be sampled; the analytes or compounds being measured; applicable technical, regulatory, or program-specific action criteria; personnel qualification requirements for collecting samples.

(ii) Sample collection procedures; equipment used; the type and number of samples to be collected including QA/QC samples (i.e., background samples, duplicates, and equipment or field blanks); preservatives and holding times for the samples (see 40 CFR Part 136.3); and chain of custody procedures.

(iii) Identification of the laboratory to be used to analyse the samples; provisions for any proficiency demonstration that will be required by the laboratory before or after contract award such as passing a performance evaluation sample; analytical method to be used; method detection limit (MDL) and minimum level (ML) to be reported; required QC results to be reported (e.g., matrix spike recoveries, duplicate relative percent differences, blank contamination, laboratory control sample recoveries, surrogate spike recoveries, etc.) and acceptance criteria; and corrective actions to be taken by the permittee or the laboratory as a result of problems identified during QC checks.

(iv) Discussion of how the permittee will perform data review and requirements for reporting of results to EPA to include resolving of data quality issues and identifying limitations on the use of the data.

C. Monitoring and Records

In addition to the information requirements specified under 40 CFR 122.41(j)(3), records of monitoring information shall include: The laboratory(ies) which performed the analyses and any comment, case narrative, or summary of results produced by the laboratory. These should identify and discuss QA/QC analyses performed concurrently during sample analyses and whether project and 40 CFR 136 requirements were met. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results; and sample receipt condition, holding time, and preservation.

D. Twenty-Four Hour Reporting of Noncompliance

The permittee shall report any noncompliance which may endanger human health or the environment. This information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances to the following persons or their offices:

CWA Compliance Office Chief: USEPA (415) 972-3577

If the permittee is unsuccessful in contacting the persons above, the permittee shall report by 9 a.m. on the first business day following the noncompliance. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

E. Intermittent Discharge Monitoring

If the discharge is intermittent rather than continuous, then on the first day of intermittent discharge, the permittee shall monitor and record data for all the characteristics listed in the monitoring requirements of Table 1 in Part I.A of this permit, after which the frequencies of analysis listed in the monitoring requirements shall apply for the duration of each such intermittent discharge. The permittee shall not be required to monitor more than the frequency required by the permit.

F. Monitoring Modification

Monitoring, analytical, and reporting requirements may be modified by the Regional Administrator upon due notice.

G. Operation

The facilities and/or systems shall be operated by an operator with training and/or certification equivalent to the requirements of the State of California, at the level appropriate to the facility and/or system.

Part IV. WHOLE EFFLUENT TOXICITY TESTING REQUIREMENTS

The permittee shall conduct annual toxicity tests on 24-hour composite effluent samples. Each year, the permittee shall conduct this routine toxicity testing at a different time of year from the previous years. Samples shall be collected for each point of discharge at the designated NPDES sampling station for the effluent. During years 1, 3, and 5 of the permit, a split of each sample shall be analyzed for all other monitored parameters at the minimum frequency of analysis specified by the effluent monitoring program.

A. Species and Test Methods

Species and short-term test methods for estimating the chronic toxicity of NPDES effluents are found in the fourth edition of *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA-821-R-02-013, October 2002; Table IA, 40 CFR Part 136). The permittee shall conduct static-renewal toxicity tests with the fathead minnow, *Pimephales promelas* (Larval Survival and Growth Test Method 1000.01); the daphnid, *Ceriodaphnia dubia* (Survival and Reproduction Test Method 1002.0); and the green alga, *Selenastrum capricornutum* (also named *Raphidocelis subcapitata)* (Growth Test Method 1003.0).

B. Chronic Toxicity Monitoring Triggers

There are no chronic toxicity effluent limits for this discharge. For this discharge, the chronic toxicity monitoring triggers are any one test result greater than 1.6 TUc (during the monthly reporting period), or any one or more test results with a calculated median value greater than 1.0 TUc (during the monthly reporting period). Results shall be reported in TUc, where TUc = 100/NOEC. The No Observed Effect Concentration (NOEC) is the highest concentration of toxicant to which organisms are exposed in a short-term chronic test that causes no observable adverse effects on the test organisms (e.g., the highest concentration of toxicant in which the values for the observed responses are not statistically significantly different from the controls). This permit requires additional toxicity testing if a chronic toxicity monitoring trigger is exceeded.

C. Quality Assurance

1. Quality assurance measures, instructions, and other recommendations and requirements are found in the test methods manual previously referenced. Additional requirements are specified, below.

2. The chronic instream waste concentrations (IWCs) for this discharge are 100% effluent and 62.5% effluent. A series of at least five effluent dilutions and a control shall be tested. At minimum, the dilution series shall include the IWCs and three dilutions below the IWCs (e.g., 100%, 62.5%, 50%, 25% and 12.5%).

3. Dilution water and control water should be laboratory water, as described in the test methods manual. If the dilution water is different from test organism culture water, then a second control using culture water shall be used.

4. If organisms are not cultured in-house, then concurrent testing with a reference toxicant shall be conducted. If organisms are cultured in-house, then monthly reference toxicant testing is sufficient. Reference toxicant tests and effluent toxicity tests shall be conducted using the same test conditions (e.g., same test duration, etc.).

5. If either the reference toxicant test or effluent toxicity test do not meet all test acceptability criteria in the test methods manual, then the permittee must resample and retest within 14 days.

6. Because this permit requires sublethal hypothesis testing endpoints from Methods 1000.0, 1002.0, and 1003.0, with-in test variability must be reviewed and variability criteria (upper and lower PMSD bounds) must be applied, as specified under Section 10.2.8 of the test methods manual. The calculated PMSDs for both reference toxicant test and effluent toxicity test results must meet the upper and lower PMSD bounds variability criteria specified in Section 10 of the test methods manual, Table 6 - *Variability Criteria (Upper and Lower PMSD Bounds) for Sublethal Hypothesis Testing Endpoints Submitted Under NPDES Permits*.

7. If the discharged effluent is chlorinated, then chlorine shall not be removed from the effluent sample prior to toxicity testing without written approval by EPA.

8. Where total ammonia concentrations in the effluent are ≥5 mg/L, toxicity may be contributed by unionized ammonia. pH drift during the toxicity test may contribute to artifactual toxicity when ammonia or other pH-dependent toxicants (e.g., metals) are present. If sample toxicity is confirmed to be artifactual and due to pH drift (as determined through parallel testing described in Section 11.3.6.1 of the test methods manual), then, following written approval by EPA, the permittee may use procedures outlined in Section 11.3.6.2 of the test methods manual to control sample pH during the toxicity test.

D. Initial Investigation TRE Workplan

Within 90 days of the permit effective date, the permittee shall prepare and submit a copy of its Initial Investigation Toxicity Reduction Evaluation (TRE) Workplan (1-2 pages) to EPA for review. This plan shall include steps the permittee intends to follow if toxicity is measured above the chronic toxicity monitoring triggers and should include, at minimum:

1. A description of the investigation and evaluation techniques that would be used to identify potential causes and sources of toxicity, effluent variability, and treatment system efficiency.

2. A description of methods for maximizing in-house treatment system efficiency, good housekeeping practices, and a list of all chemicals used in operations at the facility.

3. If a Toxicity Identification Evaluation (TIE) is necessary, an indication of who would conduct the TIEs (i.e., an in-house expert or outside contractor).

E. Accelerated Toxicity Testing and TRE/TIE Process

1. If a chronic toxicity monitoring trigger is exceeded and the source of toxicity is known (e.g., a temporary plant upset), then the permittee shall conduct one additional toxicity test using the same species and test method. This test shall begin within 14 days of receipt of test results exceeding a chronic toxicity monitoring trigger. If the additional toxicity test does not exceed a chronic toxicity monitoring trigger, then the permittee may return to its regular testing frequency.

2. If a chronic toxicity monitoring trigger is exceeded and the source of toxicity is not known, then the permittee shall conduct four additional toxicity tests using the same species and test method, approximately every two weeks, over an eight week period. This testing shall begin within 14 days of receipt of test results exceeding a chronic toxicity monitoring trigger. If none of the additional toxicity tests exceed a chronic toxicity monitoring trigger, then the permittee may return to its regular testing frequency.

3. If one of the additional toxicity tests (in paragraphs a or b) exceeds a chronic toxicity monitoring trigger, then, within 14 days of receipt of this test result, the permittee shall initiate a TRE using the same species and test method and, as guidance, EPA manual *Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants* (EPA 833-B-99-002, August 1999). In conjunction, the permittee shall develop and implement a Detailed TRE Workplan which shall include: further actions undertaken by the permittee to investigate, identify, and correct the causes of toxicity; actions the permittee will take to mitigate the impact of the discharge and prevent the recurrence of toxicity; and a schedule for these actions.

4. The permittee may initiate a Toxicity Identification Evaluation (TIE) as part of a TRE to identify the causes of toxicity, using as guidance EPA manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F, May 1992); *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080, September 1993); and *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/081, September 1993).

F. Reporting of Chronic Toxicity Monitoring Results

1. A full laboratory report for all toxicity testing shall be submitted as an attachment to the DMR for the month in which the toxicity test was conducted and shall also include: the toxicity test results (in TUc, NOEC, and EC25 or IC25) reported according to the test methods manual chapter on Report Preparation and Test Review; the dates of sample collection and initiation of each toxicity test; all results for effluent parameters monitored concurrently with the toxicity test(s); and progress reports on TRE/TIE investigations.

2. The permittee shall notify EPA in writing within 14 days of exceedance of a chronic toxicity monitoring trigger. This notification shall describe actions the permittee has taken or will take to investigate, identify, and correct the causes of toxicity; the status of actions required by this

permit; and schedule for actions not yet completed; or reason(s) that no action has been taken.

Part V. BIOSOLIDS

A. Biosolids (Sludge) Requirements

1. All biosolids generated by the permittee shall be reused or disposed of in compliance with the applicable portions of:

   a) 40 CFR 503 for biosolids that are land applied, placed in surface disposal sites (dedicated land disposal sites or monofills), or incinerated;

   b) 40 CFR 258 for biosolids disposed of in Municipal Solid Waste landfills;

   c) 40 CFR 257 for all biosolids disposal practices not covered under 40 CFR 258 or 503.

   d) 40 CFR 503 Subpart B (land application) for biosolids placed on the land for the purpose of providing nutrients or conditioning the soil for crops or vegetation.

   e) 40 CFR 503 Subpart C (surface disposal) for biosolids placed on the land for the purpose of disposal.

2. The permittee is responsible for assuring that all biosolids produced at its facility are used or disposed of in accordance with 40 CFR 257, 258, and 503, whether the permittee reuses or disposes of the biosolids itself or transfers them to another party for further treatment, reuse, or disposal. The permittee is responsible for informing subsequent preparers, appliers, or disposers of the requirements they must meet under 40 CFR 257, 258, and 503.

3. Duty to mitigate: The permittee shall take all reasonable steps to prevent or minimize any biosolids use or disposal which has a likelihood of adversely affecting human health or the environment.

4. No biosolids shall be allowed to enter wetlands or other waters of the United States.

5. Biosolids treatment, storage, and use or disposal shall not contaminate groundwater.

6. Biosolids treatment, storage, and use or disposal shall not create a nuisance such as objectionable odors or flies.

7. The permittee shall assure that haulers who transport biosolids off site for treatment, reuse, or disposal take all necessary measures to keep the biosolids contained.

8. If biosolids are stored for over two years from the time they are generated, the permittee must ensure compliance with all the requirements for surface disposal under 40 CFR 503 Subpart C, or must submit a written request to EPA with the information in 503.20 (b), requesting permission for longer temporary storage.

9. Biosolids containing more than 50 mg/kg PCB's shall be disposed of in accordance with 40 CFR 761.

10. Any biosolids treatment, disposal, or storage site shall have facilities adequate to divert surface runoff from the adjacent area, to protect the site boundaries from erosion, and to prevent any conditions that would cause drainage from the materials in the disposal site to escape from the site. Adequate protection is defined as protected from at least a 100-year storm and from the highest tidal stage that may occur.

11. Inspection and Entry: The permittee shall allow the Regional Administrator or an authorized representative thereof, upon the presentation of credentials, to:

a) enter upon all premises where biosolids produced/treated by the permittee are treated, stored, used, or disposed, either by the permittee or by another party to whom the permittee transfers the biosolids for treatment, use, or disposal,

b) have access to and copy any records that must be kept under the conditions of this permit or of 40 CFR 503, by the permittee or by another party to whom the permittee transfers the biosolids for further treatment, use, or disposal,

c) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations used in the biosolids treatment, storage, use, or disposal by the permittee or by another party to whom the permittee transfers the biosolids for treatment, use, or disposal.

12. Monitoring shall be conducted as follows:

a) Biosolids shall be tested for the metals required in Section 503.16 (for land application) or 503.26 (for surface disposal), using the methods in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), as required in 503.8(4), at the following minimum frequencies:

Volume (dry metric tons)	Frequency
0 - 290	once per year
290 - 1500	once per quarter
1500 - 15000	once per 60 days
> 15000	once per month

Sampling Plan - For accumulated, previously untested biosolids, the permittee shall develop a representative sampling plan, including number and location of sampling points, and collect representative samples. Test results shall be expressed in mg

pollutant per kg biosolids on a 100% dry weight basis.

Sampling Requirements: Biosolids to be land applied shall be tested for TKN, ammonium-N, and nitrate-N at the frequencies required above.

b) Prior to land application, the permittee shall demonstrate that the biosolids meet Class A or Class B pathogen reduction levels by one of the methods listed in 503.32. Prior to disposal in a surface disposal site, the permittee shall demonstrate that the biosolids meet Class B levels or shall ensure that the site is covered at the end of each operating day.

c) For biosolids that are land applied or placed in a surface disposal site, the permittee shall track and keep records of the operational parameters used to achieve Vector Attraction Reduction requirements in 503.33(b).

d) Class 1 facilities (facilities with pretreatment programs or others designated as Class 1 by the Regional Administrator) and Federal facilities with > 5 MGD influent flow shall sample biosolids for pollutants listed under Section 307(a) of the Act (as required in the pretreatment section of the permit for POTW's with pretreatment programs). Class 1 facilities and Federal Facilities with > 5 MGD influent flow shall test dioxin/dibenzofurans using a detection limit of < 1 pg/g during their next sampling period if they have not done so within the past 5 years and once per 5 years thereafter.

e) The biosolids shall be tested annually using the Toxicity Characteristic Leaching Procedure, or more frequently if necessary to determine hazardousness.

f) If biosolids are placed in a surface disposal site (dedicated land disposal site or monofill), a qualified groundwater scientist shall develop a groundwater monitoring program for the site, or shall certify that the placement of biosolids on the site will not contaminate an aquifer.

g) Biosolids placed in a municipal landfill shall be tested by the Paint Filter Test (method 9095) at the frequency in 12(a) above or more often if necessary to demonstrate that there are no free liquids.

13. The permittee shall comply with the following notification requirements:

a) At least 60 days prior to the use or disposal of any biosolids from this facility to a new or previously unreported site, the permittee shall submit a reuse/disposal plan to EPA and the State. The plan shall include results of the analyses required under the Monitoring Section above, a description and topographic map of the proposed site(s) for reuse or disposal, names and addresses of the applier(s) and site owner(s), and a listing of any state or local permits which must be obtained. For land application sites, the plan shall include a description of the crops or vegetation to be grown, proposed loading rates and nitrogen loadings to be used for the crops, and a groundwater monitoring plan if one exists. If the biosolids do not meet 503.13 Table 3 metals concentration limits, the permittee must notify EPA of any previous applications of biosolids subject to cumulative loading limits to the site, the cumulative amounts of pollutants applied to date, and background concentrations if known.

b) For biosolids that are land applied, the permittee shall notify the applier in writing of the nitrogen content of the biosolids, and of the applier's requirements under 503, including the requirement that the applier certify that the management practices, site restrictions, and any applicable vector attraction reduction requirements required in 40 CFR 503 Subpart B have been met. The permittee shall require the applier to certify at the end of 38 months following application of Class B biosolids that those harvesting restrictions in effect for up to 38 months have been met.

c) If biosolids are shipped to another State or to Indian Lands, the permittee must send 60 days prior notice of the shipment to the permitting authorities in the receiving State or Indian Land (the EPA Regional Office for that area and the State/Indian authorities).

d) Notification of non-compliance: The permittee shall notify EPA Region 9 of any non-compliance within 24 hours if the non-compliance may seriously endanger health or the environment. For other instances of non-compliance, the permittee shall notify EPA Region 9 and the Board of the non-compliance in writing within 5 working days of becoming aware of the non-compliance.

14. The permittee shall submit an annual biosolids report to EPA and the Board by February 19 of each year for the period covering the previous calendar year. The report shall include:

a) the amount of biosolids generated that year, in dry metric tons, and the amount accumulated from previous years.

b) results of all pollutant monitoring required in the Monitoring Section above.

c) Descriptions of pathogen reduction methods, vector attraction reduction methods, site and harvesting restrictions, and management practices, and certifications of these, as required in 503.17 and 503.27.

d) Results of any groundwater monitoring or certification by groundwater scientist that the application/disposal will not contaminate an aquifer.

e) Names and addresses of land appliers and surface disposal site operators, location of sites (latitude and longitude and names of sites); volumes applied (dry metric tons) and loading rates (metric tons/ha), dates of applications, crops grown and dates of seeding and harvesting.

f) Names, mailing addresses, and street addresses of persons who received biosolids for storage, further treatment, disposal in a municipal waste landfill, or for other reuse/disposal methods not covered above, and volumes delivered to each.

Reports shall be submitted to: U.S. EPA, WTR-7
Regional Biosolids Coordinator
75 Hawthorne St.
San Francisco, CA 94105-3901

Appendix A: STANDARD DEFINITIONS

1. A "composite sample" means, for flow rate measurements, the arithmetic mean of no fewer than eight (8) individual measurements taken at equal intervals for eight (8) hours or for the duration of discharge, whichever is shorter. For other than flow rate measurements, a composite sample means, a combination of either (8) individual portions obtained at equal time intervals for eight (8) hours or for the duration of the discharge, whichever is shorted. The volume of each individual portion shall be directly proportional to the discharge flow rate at the time of sampling. The sampling period shall coincide with the period of maximum discharge.

Sample collection, preservation and handling shall be performed as described in the most recent edition of 40 CFR 136.3 (Table II). Where collection, preservation and handling procedures are not outlined in 40 CFR 136.3, procedures outlined in the 20th edition of *Standard Methods for the Examination of Water and Wastewater* shall be used.

2. The "daily maximum concentration limit" means the measurement made on any single discrete sample or composite sample.

3. The "daily maximum mass limit" means the total discharge by mass during any calendar day.

4. A "discrete" or "grab"sample means an individual sample collected from a single location at a specific time, or over a period of time not exceeding 15 minutes. Sample collection, preservation and handling shall be performed as described in the most recent edition of 40 CFR 136.3 (Table II). Where collection, preservation and handling procedures are not outlined in 40 CFR 136.3, procedures outlined in the 20th edition of *Standard Methods for the Examination of Water and Wastewater* shall be used.

5. The "Method Detection Limit (MDL)" is the minimum concentration of an analyte that can be detected with 99 percent confidence that the analyte concentration is greater than zero, as defined by the specific laboratory method listed in 40 CFR Part 136. The procedure for determination of a laboratory MDL is in 40 CFR Part 136, Appendix B.

6. The "Minimum Level (ML)" is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all of the method-specified sample weights, volumes, and processing steps have been followed (as defined in EPA's draft *National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantitative Levels*, March 22, 1994). Promulgated method-specific MLs are contained in 40 CFR Part 136, Appendix A and must be utilized if available. If a promulgated method-specific ML is not available, then an interim ML shall be calculated. The interim ML is equal to 3.18 times the promulgated method-specific MDL rounded to the nearest multiple of 1, 2, 5, 10, 20, 50, etc.

When neither an ML nor an MDL are available under 40 CFR 136, an interim ML should be

calculated by multiplying the best estimate of detection by a factor of 3.18; when a range of detection is given, the lower end value of the range of detection should be used to calculate the ML. At this point in the calculation, a different procedure is used for metals than for non-metals.

a. For metals: due to laboratory calibration practices, calculated MLs for metals may be rounded to the nearest whole number.

b. For non-metals: because analytical instruments are generally calibrated using the ML as the lowest calibration standard, the calculated ML is then rounded to the nearest multiple of (1, 2, or 5) $\times 10^n$, where n is zero or an integer. (For example: if an MDL is 2.5 ug/L, then the calculated ML is 2.5 ug/L $\times$ 3.18 = 7.95 ug/L. The multiple of (1, 2, or 5) $\times 10^n$ nearest to 7.95 is $1 \times 10^1 = 10$ ug/L, so the calculated ML (rounded to the nearest whole number) is 10 ug/L.)

7. The "monthly or weekly average concentration limit", other than for fecal or total coliform bacteria, means the arithmetic mean of consecutive measurements made during calendar month or weekly period, respectively. The "monthly or weekly average" concentration for fecal or total coliform bacteria means the geometric mean of measurements made during a monthly or weekly period, respectively. The geometric mean is the nth root of the product of n numbers.

8. The "monthly or weekly average mass limitation" means the total discharge by mass during a calendar monthly or weekly period, respectively, divided by the number of days in the period that the facility was discharging. Where less than daily sampling is required by this permit, the monthly or weekly average value shall be determined by the summation of all the measured discharges by mass divided by the number of days during the monthly or weekly period when the measurements were made.

9. A "24-hour composite sample" means either: (i) a time-proportioned mixture of not less than eight (8) discrete aliquots obtained at equal time intervals. The volume of each aliquot shall be directly proportional to the discharge flow rate at the time of sampling, but not less 100 ml; or (ii) a flow-proportional combination of individual samples obtained at regular intervals over a 24-hour sampling period. The volume of each sample shall be proportional to the flow rate during the 24-hour sampling period. Sample collection, preservation and handling shall be performed as described in the most recent edition of 40 CFR Part 136.3 (Table II). Where collection, preservation and handling procedures are not outlined in 40 CFR Part 136.3, procedures outlined in the 20th edition of *Standard Methods for the Examination of Water and Wastewater* shall be used.

Fact Sheet
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
NO. CA 0049675
June 2010

Permittee's Name:	Buena Vista Rancheria, Buena Vista Casino (formerly Flying Cloud Casino)
Mailing Address:	P.O. Box 162283 Sacramento, CA 95814
Plant Location:	4650 Coal Mine Road Ione, CA 95640
Contact Person	Rhonda Pope, Tribal Chairperson (916) 491-0011

I. Status of Permit

This is a new permit application for a facility to be constructed. This is classified as a minor permit.

II. General Information

The Buena Vista Casino will be located on a 67 acre Rancheria located in Amador County, CA approximately 4 miles south of the town of Ione.

III. Facility Information

The waste water treatment plant (WWTP) will serve a casino with approximately 56,000 square feet of gaming. Wastewater generated from the casino includes sewage, restaurant washwaters, and miscellaneous wastewater from guest support services. The WWTP will not serve residential connections, and will not accept wastewater from any industrial facilities.

The 67 acre site is relatively flat at the northern end with elevations rising several hundred feet towards the middle of the property. The site contains an area of historic archaeological and cultural significance. An archaeological survey has been conducted to determine the extent of the area. Archaeological Inventory of the Buena Vista Rancheria, Amador County, Oct, 2005. An archaeological resource protection area has been established around this area. No construction or casino-related activities will disturb the archaeological resource protection area.

A natural spring is located in the higher elevations of the site, which drains to a pond and then drains to the east of the site where it flows and drains onto the adjacent property. The spring and existing pond will not be affected by construction or casino-related activities.

A 3.93-acre jurisdictional wetland is located in the northwest corner of the site, adjacent to Coal Mine Road on the western boundary of the property. During the site inspection, the wetland was observed to drain into a culvert that flowed under Coal Mine Road. The culvert dropped approximately 5 feet from the elevation of the wetland. There appeared to be a berm separating the wetland area from a shallow drainage canal alongside the road that drained into the culvert. Because it was raining at the time of the site visit, the wetland was observed to be overflowing the berm and draining into the culvert.

The casino will be built in two phases. Phase 1 flows are anticipated to be 50,000 gallons per day (gpd) for weekdays, 100,000 gpd for weekends, and average 60,000 gpd annually. The Phase 2 WWTP is anticipated to have an average annual flow of 100,000 gpd. However, the projected flows at a casino facility may differ significantly from weekday to weekend, and the facility projects an average weekend flow of 160,000 gpd, with a contingency capacity for 200,000 gpd. The facility has therefore been designed for a peak flow of 200,000 gpd.

Wastewater from the casino will be treated through an immersed membrane bioreactor (MBR) treatment system. The permit application describes an MBR system as a tertiary system similar to an activated sludge treatment plant. The MBR is operated at a higher solids concentration than conventional activated sludge systems, which make it appropriate for treating high strength wastewater with varying flows that are typical of wastewaters produced by a casino operation.

The treatment system at the Buena Vista Casino will consist of an active oil and grease interceptor followed by a passive oil and grease separator just prior to the influent lift station. These interceptors will decrease the amount of oil and grease entering the MBR. The lift station will pump the wastewater to the plant headworks. At the headworks, wastewater will be screened by a fine screen (2 mm) with a conveyor/washer/compactor. The fine screening of large particulate matter is necessary to protect the membrane from large particles. Solids from the screen will go to a compactor and disposed at an off-site landfill. The headworks area will be covered to control odors.

Wastewater will flow to two parallel equalization/anoxic tanks, each having a capacity of 17,600 gallons and a mixer. Wastewater then flows to 2 parallel pre-aeration basins (50,400 gallons each) where a fine bubble diffuser system will be used to aerate the tanks. The wastewater then flows to 2 parallel membrane basins (18,800 gallons each).

Membrane filters are suspended in the MBR tanks and a slight vacuum is applied to pull clear effluent through the membranes. The membranes replace the clarifier and filter used in conventional tertiary treatment plants. The pore size of membranes (0.1 to 0.4 microns) is small enough so that coliform bacteria do not pass through, eliminating the need for conventional disinfection. A constant source of coarse bubble scour air is applied at the bottom of the membrane cassettes to remove solids that might accumulate between and on the surface of the membrane.

Mixed liquor from the membrane basins will be recirculated from the aeration basin to the anoxic basin at a rate of approximately 4 to 1. In case of excess flows, maintenance or emergency, the Buena Vista WWTP has two emergency storage basins (ESBs), one at the end of the process trains and one along the side of the process trains. ESB 1 will have an overflow capacity of 160,000 gallons. There is an additional overflow capacity of 113,000 gallons in ESB 2.

Membranes are cleaned typically every 15 minutes to 1 hour by using a relaxation mode that lasts for 1-2 minutes. Sodium hypochlorite will be added approximately twice per year at a concentration of 0.5% to the backflow to inhibit biogrowth in the membranes.

Solids removed from the fine screen and MBR sludge line will be sent to a screw press and then sent off site to a landfill.

Final effluent will be disinfected through UV disinfection consisting of 2 UV units in series.

The casino anticipates that approximately 30 % of the treated effluent will be recycled and re-used at the casino. Recycle uses include irrigation and non-potable uses in the casino such as toilet flushing. Final effluent designated for reuse will be chlorinated and sent to a recycle water storage tank. The storage tank will contain baffle walls to double as the chlorine contact chamber.

Stormwater runoff from the WWTP area will be collected and directed back to the WWTP. Therefore, the facility does not expect to obtain coverage under the multi sector general stormwater permit.

IV. Receiving Water

The effluent from the WWTP will discharge to a constructed, vegetated swale south of the parking garage and casino which will travel on-site for approximately ½ mile. At the southwest corner of the property (at Coal Mine Rd), the water will flow through a reverse siphon into a drain under Coal Mine Road to an unnamed tributary/drainage channel which flows east for several miles before entering Jackson Creek. Jackson Creek subsequently flows into Dry Creek and to the lower Mokelumne River.

The Tribe does not have approved water quality standards for discharges to waters located on the Buena Vista Rancheria. However, the discharge of wastewater from the WWTP flows to a tributary of the Mokelumne River (via Dry Creek and Jackson Creek), for which the State of California has established water quality standards. Therefore, water quality standards applicable to the Mokelumne River (Camanche Reservoir to Delta) and its tributaries must be met at the point where the effluent discharges to State waters. As noted above, the effluent will enter State waters shortly after discharging. EPA has not considered the availability of any water which may dilute the effluent prior to reaching State waters, and EPA has therefore evaluated

compliance of the discharge with meeting State standards as criteria at the end of pipe.

Therefore, EPA has applied water quality standards consistent with the provisions of the Water Quality Control Plan (Basin Plan) for the Sacramento and San Joaquin River Basins - Fourth Edition - 1998", as adopted by the Central Valley Regional Water Quality Control Board and hereafter referred to as the Basin Plan.

The Basin Plan on page II-2.00 states: "Existing and potential beneficial uses which currently apply to surface waters of the basin plan are presented in Figure II-1 and Table II-1. The beneficial uses of any specifically identified water body generally apply to its tributary streams". There are no specifically identified beneficial uses for the tributaries of Dry Creek. Therefore, the beneficial uses designated for Jackson Creek are those that apply to the Mokelumne River from Camanche Reservoir to the Delta and are listed as: Agricultural supply (AGR), Water Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or early Development (SPWN) and Wildlife Habitat (WILD). Additionally, the California State Water Resources Control Board Resolution 88-63, incorporated into the Basin Plan pursuant to Regional Board Resolution 89-056, requires that municipal and domestic supply (MUN) use be applied to surface waterbodies that do not have beneficial uses listed in Table II-1. Therefore, MUN also applies to tributaries to the Mokelumne River.

V. Description of Discharge

The discharge will be tertiary treated municipal wastewater. Disinfection will be by UV disinfection prior to discharge.

The permit application lists the following design parameters for the new treatment system:

Pollutant or parameter	Influent Concentration	Effluent Concentration
BOD5	450-600 mg/L	<10 mg/L
TSS	450-600 mg/L	<10 mg/L
Total Nitrogen	N/A	<10 mg/L Total Nitrogen
NH4-N	N/A	< 2 mg/L NH3-N

VI. Regulatory Basis for NPDES Permit Effluent Limitations

Section 301(a) of the Clean Water Act provides that the discharge of any pollutant to waters of the United States is unlawful except in accordance with an NPDES permit. Section 402 of the Act establishes the NPDES program. The program is designed to limit the discharge of pollutants into waters of the U.S. from point sources (40 CFR 122.1 (b)(1)) through a

combination of various requirements including technology-based and water quality-based effluent limitations.

Technology-based effluent limitations

Under 40 CFR Part 125.3(c)(2), Technology based treatment requirements may be imposed on a case-by-case basis under Section 402(a)(1) of the Act, to the extent that EPA promulgated effluent limitations are inapplicable, i.e., the regulation allows the permit writer to consider the appropriate technology for the category or class of point sources and any unique factors relating to the applicant.

The minimum levels of effluent quality attainable by secondary treatment for Settleable Solids, as specified in the EPA Region IX Policy memo dated May 14, 1979, are listed below:

Settleable Solids:
Concentration based Limits
30-day average - 1 ml/l
Daily maximum - 2 ml/l

The minimum levels of effluent quality attainable by secondary treatment for Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), and pH, as defined in 40 CFR 133.102, are listed below:

BOD:
Concentration-based Limits
30-day average - 30 mg/l
7-day average - 45 mg/l
Removal Efficiency - minimum of 85%

Mass-based Limits
30-day average - (30 mg/l)(0.10 mgd)(8.34 conversion factor) = 25 lbs/day
7-day average - (45 mg/l)(0.20 mgd)(8.34 conversion factor) = 75 lbs/day

TSS:
Concentration-based Limits
30 - day average - 30 mg/l
7 - day average - 45 mg/l
Removal efficiency - Minimum of 85%

Mass-based Limits
30-day average - (30 mg/l)(0.10 mgd)(8.34 conversion factor) = 25 lbs/day
7-day average - (45 mg/l)(0.20 mgd)(8.34 conversion factor) = 75 lbs/day

pH:
Instantaneous Measurement: 6.0 - 9.0 standard units (s.u.)

2. Water Quality-Based Effluent Limitations

Sections 402 and 301(b)(1)(C) of the Clean Water Act require that the permit contain effluent limitations to meet water quality standards. 40 CFR 122.44(d) provides that an NPDES permit must contain:

"Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:
(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality."

40 CFR 122.44 (d)(1)(i) states:
"Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

40 CFR 122.44 (d) (1) (ii) states:
"When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and non-point sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate, the dilution of the effluent in the receiving water."

40 CFR122.44 (d)(1) (iii) states:
"When the permitting authority determines using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant."

Guidance for the determination of reasonable potential to discharge toxic pollutants is included in both the Technical Support Document for Water Quality-Based Toxics Control (TSD) - Office of Water Enforcement and Permits, U.S. EPA, dated March 1991 and the U.S.EPA NPDES Permit Writers Manual - Office of Water, U.S. EPA, dated December 1996. EPA's technical support document contains guidance for determining the need for permit limits. In doing so, the regulatory authority must satisfy all the requirements of 40 CFR 122.44(d)(1)(ii). In determining whether the discharge causes,

has the reasonable potential to cause or contributes to an excursion of a numeric or narrative water quality criterion for individual toxicants, the regulatory authority must consider a variety of factors. These factors include the following:

- Dilution in the receiving water,
- Existing data on toxic pollutants,
- Type of industry,
- History of compliance problems and toxic impacts,
- Type of receiving water and designated use.

Therefore, based on WWTP operations and projected waste water quality data provided in the application, EPA conducted a "reasonable potential" analysis to compare effluent discharges to water quality standards, as required by 40 CFR 122.44(d)(1)(ii), (iii) and (iv).

A. Dilution in the receiving water

Discharge from Outfall 001 is to an unnamed tributary to Jackson Creek. Jackson Creek has no natural flow during certain times of the year. Therefore, no dilution of the WWTP effluent has been considered in the development of effluent limits.

B. Existing data on toxic pollutants

This is a new discharge and therefore no discharge of effluent has been reported during the previous permit term and therefore there is no data on toxic pollutants.

The new treatment plant is designed to meet the following effluent concentrations:

BOD5 < 10 mg/l
TSS < 10 mg/l;

The WWTP will not serve any residential customers, and most of the flows originate from sanitary uses at the casino. No industrial sources will discharge to the WWTP, although there will be a restaurant in the casino. The permittee will be required to conduct a full scan of priority pollutants within 90 days of discharge from the new treatment plant and in the 3rd and 5th year thereafter. Reasonable potential will be re-evaluated at this time and the permit may be re-opened to incorporate new water quality based limits as necessary.

C. Type of Industry

Typical pollutants of concern in untreated and treated domestic wastewater include ammonia, nitrate, oxygen demand, pathogens, temperature, pH, oil and grease, and solids. Chlorine and turbidity may also be of concern due to treatment plant operations.

D. Receiving Water

As described in Section IV of this Statement of Basis, numeric water quality standards that apply to tributaries of the Mokelumne River are:

AGR, REC-1, REC-2, FW HABITAT-WARM/COLD, SPWN-WARM/COLD, WILD and MUN.

No effluent data is available for the discharge from the Permittee, therefore, EPA evaluated typical pollutants and applicable water quality standards to protect the beneficial uses of the receiving water.

E. Rationale for Effluent Limitations

EPA evaluated the typical pollutants expected to be in WWTP discharge effluent and selected the most stringent of applicable technology-based standards or water quality-based effluent limitations. Where effluent concentrations of toxic parameters are unknown or are not reasonably expected to be discharged in concentration that have the reasonable potential to cause or contribute to water quality standards, EPA has established monitoring requirements in the permit. This data will be re-evaluated and the permit re-opened to incorporate effluent limitations if necessary.

Ammonia

Treated and untreated domestic wastewater may contain levels of ammonia that are toxic to aquatic organisms. Ammonia is converted to nitrate during biological nitrification process, and then nitrate is converted to nitrogen gas through biological denitrification process. USEPA's Ambient Water Quality Criteria for the Protection of Freshwater Aquatic Life recommends acute and chronic criteria that are pH and temperature dependent. USEPA's ambient criteria recommends acute criteria that are dependent on pH and fish species and the chronic criterion is dependent on pH and temperature. At lower temperatures, the chronic criterion is also dependent on the presence or absence of early life stages of fish. The temperature dependency in the 1999 Update results in a gradual increase in the criterion as temperature decreases, and a criterion that is more stringent, at temperatures below 15 C, when early life stages of fish are expected to be present. As pH increases, both the acute and chronic toxicity of ammonia increases.

For the acute criterion, EPA reviewed effluent monitoring data submitted to EPA from other similar MBR operations (Cache Creek Casino Resort's underground injection control reports) and determined the maximum observed effluent pH concentration was 8.0. EPA believes an effluent pH of 8.0 is a reasonable and conservative assumption. Therefore, in order to protect against the short-term exposure of an organism, the acute criterion based on a maximum pH of 8.0 is 8.40 mg/L.

For the chronic criterion, EPA recommends that the thirty-day average concentration of total ammonia nitrogen not exceed, more than once every three years on the average, a criteria continuous concentration (CCC) and EPA recommends that within the 30-day averaging period, no 4-day average concentration should exceed 2.5 times the

CCC. EPA chose the maximum allowed pH value of 8.5 to be protective in the worst case scenario. Because the unnamed tributary may be dominated by effluent, EPA determined to use the worst case temperature conditions of the treated effluent to ensure compliance with ammonia toxicity. However, because this is a new discharge facility, no effluent temperature data was available. EPA therefore reviewed effluent data from a nearby POTW, the City of Jackson (NPDES permit NO. CA0079391, issued 27 October 2007 by the Central Valley Regional Water Quality Control Board) which also discharges to an effluent dominated waterbody and used the temperature of the treated effluent to establish chronic ammonia criteria. For the City of Jackson, the maximum observed 30-day effluent temperature was 75°F (23.9°C), for the rolling 30-day period ending 10 August 2005. Therefore, EPA believes this is a reasonable assumption for WWTP effluent for this geographical area, and has used this temperature as a maximum until additional effluent temperature data can be collected from the Buena Vista Casino. Using a maximum pH of 8.0 and a maximum temperature of 23.9°C, EPA determined the 30-day continuous concentration criteria to be 1.32 mg/L.

Due to the potential for ammonia to be present in sanitary wastewater at toxic levels and due to the conversion of ammonia to nitrate, effluent limitations are established for ammonia.

Based on EPA's approach in the Technical Support Document (EPA/505/2/90-001)

EPA calculated the Long Term Averages (LTA):
Acute LTA = 8.40 mg/L criteria x 0.321 multiplier based on Cv=0.6 and 99th percentile) = 2.70 mg/L

Chronic LTA 1.32 mg/L criteria x 0.840 multiplier based on Cv=0.6, 95th percentile, and 30 day averaging period) = 1.11 mg/L

EPA selected the lowest of the LTAs (1.11 mg/L) and calculated the:
Average Monthly Limit = 1.11 mg/L x 1.55 multiplier based on Cv=0.6, 95th percentile, and n=4 samples per month
= 1.72 mg/L

Maximum Daily Limit = 1.11 mg/L x 3.11 multiplier based on Cv=0.6, 99th percentile = 3.45 mg/L

Nitrate

Treated and untreated domestic wastewater may contain levels of ammonia that are toxic to aquatic organisms. Ammonia is converted to nitrate during biological nitrification process, and then nitrate is converted to nitrogen gas through biological denitrification process.

The primary MCL for protection of MUN is 10 mg/L and the EPA Ambient Water Quality Criteria for the Protection of Human Health is also 10 mg/L for non-cancer

effects. Due to the potential for ammonia to be present in sanitary wastewater and due to the conversion of ammonia to nitrate, effluent limitations are established for nitrate (measured as N).

Total Dissolved Solids/Electrical Conductivity

The Basin Plan does not contain numeric criteria for TDS or EC. To protect the beneficial uses of water for agriculture uses, studies by the United Nations have recommended a goal of 700 umhos/cm. The California Department of Health Services has recommended an SMCL for EC of 900 umhos/cm, with an upper level of 1600 umhos/cm and a short term level of 2200 umhos/cm.

Due to lack of discharge data, it is unknown at this time if the discharge from the new WWTP will have the reasonable potential to cause or contribute to an exceedance of water quality standards. Due to previous studies conducted by the RWQCB on the origin of dissolved solids impairment , it is unlikely that the WWTP will be a significant contributor of dissolved solids. Therefore, the draft permit establishes monthly monitoring requirements for EC and TDS to assess reasonable potential.

pH:

The basin plan requires that a pH of 6.5-8.5 must be met at all times and that changes in normal ambient pH level not exceed 0.5 units. This is more stringent than technology based requirements for pH; therefore, this limit is included in the permit.

Fecal Coliform:

Based on the nature of WWTP effluent, there is a reasonable potential for fecal coliform to violate water quality standards. Based on REC-1 Beneficial Use fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 200/100 ml, nor shall more than 10% of the total number of samples during any 30-day period exceed 400/100 ml - 10% of samples for 30-day period. Based on MUN standards, fecal coliform must not exceed 2.2 /100mL in a 7 day average. Since the MUN is the most stringent standard, this limit is included in the permit.

The effluent is designed to meet California (Title 22) disinfection standards for the re-use of wastewater. Title 22 requires that for spray irrigation of food crops, parks, playgrounds, schoolyards, and other areas of public access, wastewater be adequately disinfected, oxidized, coagulated, clarified, and filtered and that the effluent total coliform levels not exceed 2.2 MPN/100 ml as a 7-day median. Although a limit for fecal coliform and turbidity has been required in the permit that are analogous to Title 22 standards, EPA is not including effluent limits in the permit to demonstrate full compliance with California Title 22 disinfection standards.

Total Residual Chlorine:

Chlorine will not be used to disinfect WWTP effluent (which is disinfected through the use of filtration and UV disinfection) and is not expected to be present in the effluent

in detectable concentrations. Chlorine will be added to recycled effluent immediately prior to storage in the recycle water storage tanks. This water will not be discharged. However, due to the use of chlorine at the facility, EPA has included effluent limits in the proposed permit to ensure that the effluent does not contain chlorine in concentrations that will exceed water quality standards .

Dissolved oxygen

The basin plan requires that dissolved oxygen not be reduced below 7.0 mg/L based on COLD and SPWN beneficial uses. Therefore, this is included in the permit.

Oil and Grease

Treated and untreated domestic wastewater may contain levels of oil and grease which may be toxic to aquatic organisms. There are no numeric water quality standards for oil and grease. Therefore, an effluent limit based on Best Professional Judgment is included in the permit.

Toxicity:

The basin plan includes language that "All waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life." Therefore, the permit requires monitoring for toxicity based on Whole Effluent Toxicity Procedures to assess the reasonable potential of the discharge to have toxic effects on aquatic organisms. The permit also requires monitoring for priority pollutants to assess the reasonable potential of the discharge to cause or contribute to a water quality standard violation.

3. Narrative water quality standards:

The following narrative water quality standards contained in the permit are based upon water quality objectives contained in the Basin Plan.

The discharge shall not cause the following in downstream waters:

1. The fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, to exceed a geometric mean of 200 MPN/100 mg/L or cause more than10 percent of total samples taken during any 30-day period to exceed 400 MPN/100 mg/L.

2. Biostimulatory substances that promote aquatic growths in concentrations that cause nuisance or adversely affect beneficial uses.

3. Esthetically undesirable discoloration.

4. Concentrations of dissolved oxygen to fall below 7.0 mg/L. The monthly median of the mean daily dissolved oxygen concentration shall not fall below 85 percent of saturation

in the main water mass, and the 95th percentile concentration shall not fall below 75 percent of saturation.

5. Floating material to be present in amounts that cause nuisance or adversely affect beneficial uses.

6. Oils, greases, waxes, or other materials to accumulate in concentrations that cause nuisance, result in a visible film or coating on the water surface or on objects in the water, or otherwise adversely affect beneficial uses.

7. The ambient pH to fall below 6.5, exceed 8.5, or change by more than 0.5 units. A one month averaging period may be applied when calculating the pH change of 0.5 units.

8. Radionuclides to be present in concentrations that harm human, plant, animal or aquatic life; or that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life.

9. Deposition of material that causes nuisance or adversely affects beneficial uses.

10. Taste- or odor-producing substances to impart undesirable tastes or odors to domestic or municipal water supplies or to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses.

11. The ambient temperature to increase more than 5 degrees F.

12. Toxic pollutants to be present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health.

13. The turbidity to increase as follows:
a. More than 1 Nephelometric Turbidity Units (NTUs) where natural turbidity is between 0 and 5 NTUs.
b. More than 20 percent where natural turbidity is between 5 and 50 NTUs.
c. More than 10 NTUs where natural turbidity is between 50 and 100 NTUs.
d. More than 10 percent where natural turbidity is greater than 100 NTUs.
When wastewater is treated to a tertiary level (including coagulation) or equivalent, a one-month averaging period may be used when determining compliance with Receiving Water Limitation E.13.a.

14. Aquatic communities and populations, including vertebrate, invertebrate, and plant species, to be degraded.

VII. Monitoring Requirements

1. Priority Pollutants

The discharger must conduct a comprehensive screening test for the Priority Toxic Pollutants listed for the California Toxics Rule in the Code of Federal Regulations (CFR) at 40 CFR Section 131.38, within 90 days of discharge from the new treatment plant, and in the 3rd and 5th years of the permit. If an exceedance of a criteria, or a reasonable potential for exceedance of a criteria is detected the permit may be re-opened to require appropriate limits.

2. Whole Effluent Toxicity

The permit establishes tests for toxicity for chronic toxicity.

Chronic toxicity testing evaluates reduced growth/reproduction at 100 percent effluent. Chronic toxicity is to be reported based on the No Observed Effect Concentration (NOEC). The permittee shall conduct short-term tests with the water flea, Ceriodaphnia dubia (survival and reproduction test), the fathead minnow, Pimephales promelas (larval survival and growth test) and the green alga, Raphidocelis subcapitata (growth test). The presence of chronic toxicity shall be estimated as specified by the methods in the 40 CFR Part 136 as amended on November 19, 2002.

VIII. Special Conditions

1. Erosion Control

The Permittee shall implement best management practices to safeguard against erosion from the discharge and prevent adverse impact to adjacent wetlands.

2. Pretreatment Requirements

As described above, there are no industrial facilities discharging to the WWTP. Therefore, there are no pretreatment requirements in this permit.

3. Re-use Standards

The Rancheria will re-use wastewater for on-site irrigation and non-potable water uses such as toilet flushing. Therefore, the Tribe has agreed to follow the reclamation criteria established by the California Department of Health Services to protect public health and the environment. The California Department of Health Services (DHS) has established statewide reclamation criteria in Chapter 3, Division 4, Title 22, California Code of Regulations (CCR), Section 60304, et seq. (hereafter Title 22) for the use of reclaimed water. The permit's re-use requirements implement the reclamation criteria in Title 22.
Although the Tribe is not required to comply with these State criteria, the Tribe has agreed to follow criteria for the re-use of its wastewater, and these terms are therefore included in the permit.

IX. Threatened and Endangered Species

No federal listed species occur on or near the project site. As federal listed species are known from the region of the project site, the U.S. Fish and Wildlife Service (USFWS) has expressed concerns regarding potential impacts to federal listed species. On March 10, 2006, the USFWS prepared a letter responding to an NPDES permit application under consideration by the EPA (USFWS File No. 1-1-06-0864). Similarly, in a letter dated March 5, 2007, the USFWS prepared a comment letter on the circulated Draft Tribal Environmental Impact Report (DTEIR) (USFWS File No. 1-1-07-I-0692). In both letters the USFWS stated that the project may affect federal listed species and requested documentation for endangered species studies. Both letters state that the USFWS is "concerned about the potential adverse effects of this project on threatened California tiger salamander, vernal pool fairy shrimp (*Branchinecta lynchi*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Ione manzanita (*Arctostaphylos myrtifolia*), Ione buckwheat (*Eriogonum apricum* var. *apricum*), and endangered vernal pool tadpole shrimp (*Lepidurus packardi*), Irish Hill buckwheat (*Eriogonum apricum* var. *prostratum*) and Sacramento Valley Orcutt grass (*Orcuttia viscida*)." In the March 10th, 2006 letter, the USFWS recommends that surveys following the Service's *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* be completed.

In response to these concerns, Monk & Associates (M&A) requested authorization from USFWS to conduct protocol California tiger salamander larval surveys via an email and subsequent Habitat Assessment Report submitted to Dr. Jeffrey Jorgenson of USFWS. M&A received permission from the USFWS to conduct protocol spring larval surveys on March 27, 2006 (USFWS File No. 1-1-06-I-0864). Following the completion of the spring larval surveys in 2006, M&A prepared a winter survey plan requesting authorization to conduct a protocol wet season (winter) survey using drift fencing and pitfall traps. This request was submitted to the USFWS on October 3, 2006. M&A received permission from the USFWS to conduct protocol winter surveys via an email from Dr. Jorgenson on October 4, 2006 (USFWS ID # 1-1-07-TA-0002).

On June 24, 2008, M&A submitted a Biological Assessment report to the Corps and USFWS that assessed potential impacts to the above-mentioned federally-listed species on the Buena Vista Rancheria casino site (USFWS Reference No. 81420-2008-I-1829-1; Corps File No. 2000-003-57). On August 26, 2008, the USFWS concurred with M&A's determination that the Casino project would not affect federally-listed species, including the California tiger salamander (*Ambystoma californiense*) (CTS) and the California red-legged frog (*Rana aurora draytonii*) (CRLF) on the Casino site.

On October 27, 2008, the USFWS requested that the Corps reinitiate consultation of the Buena Vista Rancheria Casino Project, to take into consideration all related on-site and off-site projects associated with the Buena Vista Rancheria Casino project that were not heretofore addressed in the original Biological Assessment prepared by M&A on June 24, 2008. USFWS also requested more information regarding the potential presence of vernal pool branchiopods on the Casino

site.

A new Biological Assessment was submitted to the Corps on September 15, 2009 that responds to the October 2008 USFWS request. This Biological Assessment addresses the effects of the wastewater treatment plant and storm water discharge system that are now required to be constructed as part of the proposed project. In addition, the Biological Assessment addresses the potential effects of the project on federal listed species that could occur from construction of required off-site improvements. *The Biological Assessment concludes that the proposed project (on and offsite) will have no effects on plants or animals protected pursuant to the Federal Endangered Species Act.*

Below, we provide a complete review of federal listed species issues with respect to the project site and off-site road improvement areas based upon federally listed species known from the region of the project site and off-site road improvement areas.

Four federally listed plant species and four federally listed wildlife species are known to occur in the project region: Ione manzanita, succulent owl's clover, Ione buckwheat, Irish Hill buckwheat, vernal pool fairy shrimp, vernal pool tadpole shrimp, California tiger salamander, and California red-legged frog. Below we briefly discuss each of these species:

1. Ione Manzanita

Ione manzanita (*Arctostaphylos myrtifolia*) is a federally threatened species and is on CNPS List 1B.2. The Biological Assessment addresses the potential for the impacts to this species, and concludes that Ione manzanita will not be affected by the proposed project.

2. Succulent Owl's Clover

Succulent owl's clover (*Castilleja campestris* ssp. *succulenta*) is a federal-listed threatened species, a state-listed endangered species, and is on CNPS List 1B.2. The Biological Assessment has determined that succulent owl's clover will not be affected by the proposed project.

3. Ione Buckwheat

Ione buckwheat (*Eriogonum apricum* ssp. *apricum*) is a federal-listed endangered species and a state-listed endangered species. It is on CNPS List 1B.1. Project-related threats to Ione buckwheat were evaluated in the attached Biological Assessment. This document demonstrates that Ione buckwheat will not be affected by the proposed project.

4. Irish Hill Buckwheat

Irish Hill buckwheat (*Eriogonum apricum* ssp. *prostratum*) is a federal-listed endangered species and a state-listed endangered species. Project-related threats to Irish Hill buckwheat were evaluated in the Biological Assessment. This document demonstrates that Irish Hill buckwheat will not be affected by the proposed project.

5. Vernal Pool Fairy Shrimp

In a letter dated January 5, 2001 (USFWS File No. 200000357), the USFWS provided a review of the proposed casino project in consultation with the National Indian Gaming Commission conducted pursuant to Section 7 of the Endangered Species Act of 1973, as amended. In that letter, the potential presence of vernal pool branchiopods in wetlands found on the project site was dismissed by the USFWS.

Regarding off-site proposed road improvements, project related threats to potential branchiopod habitats adjacent to the project area were evaluated in the Biological Assessment. This document demonstrates that the project will not affect vernal pool fairy shrimp.

6. Vernal Pool Tadpole Shrimp

In a letter dated January 5, 2001 (USFWS File No. 200000357), the USFWS provided a review of the proposed project as part of the informal consultation on this project under Section 7 of the Endangered Species Act of 1973, as amended. In that letter, the potential presence of vernal pool branchiopods on the project site was dismissed by the USFWS.

Regarding off-site proposed road improvements, project related threats to potential branchiopod habitats adjacent to the project area were evaluated in the Biological Assessment. This document demonstrates that the project will not affect vernal pool tadpole shrimp.

7. Valley Elderberry Longhorn Beetle

Blue elderberry (*Sambucus mexicana*), the host plant for valley elderberry longhorn beetle, occurs on the bluffs south of the proposed project. The shrubs are outside of the proposed impact area[1]. As such, blue elderberry shrubs and the valley elderberry longhorn beetle will not be impacted by the proposed project.

8. California Tiger Salamander

M&A conducted USFWS-approved protocol surveys for California tiger salamander on the project site in 2006-2007. No California tiger salamander adults, larvae, or eggs were observed during that survey. A formal California tiger salamander survey report reporting negative findings was prepared and submitted to USFWS on June 1, 2007. In a letter dated August 26, 2008 (Ref # 81420-2008-I-1829-1), the USFWS concurred with M&A's determination that the proposed casino project site would not be likely to adversely affect California tiger salamander on the project site.

Regarding off-site proposed road improvements, project-related threats to California tiger salamanders were evaluated in the Biological Assessment. The document concludes that the project will not affect California tiger salamanders.

9. California Red-Legged Frog

A California red-legged frog site survey report was prepared by Ms. Trish Tatarian (Wildlife

[1] North Fork Associates 2005. Biological Resource Assessment for the 67-acre Buena Vista Rancheria Project. Amador County, California. September 26.

Research Associates) in December of 2005. This report concludes that based on the lack of known occurrence data, and the results of field surveys, the proposed project will not affect California red-legged frogs. Additionally, M&A believes California red-legged frog would have been detected on the site during the California tiger salamander surveys conducted in 2006-2007. In a letter dated August 26, 2008 (Ref # 81420-2008-I-1829-1), the USFWS concurred with M&A's determination that the proposed project would not be likely to adversely affect California red-legged frogs on the project site.

Regarding off-site proposed road improvements, project-related threats to California red-legged frogs were evaluated in the Biological Assessment. The document concludes that the project will not affect California red-legged frogs.

10. Summary

Based upon studies that have been completed by qualified, competent biologists, M&A concludes that the proposed project will not impact species protected pursuant to the Federal Endangered Species Act. On September 15, 2009, M&A provided the Corps and USFWS with a revised Biological Assessment that demonstrated the proposed project will have "no effects" on federally listed species.

X. National Historic Preservation Act

EPA determined that the proposed project is an "undertaking," as defined in 36 C.F.R. § 800.16(y); Consistent with the provisions of the NHPA regulations and its federal trust responsibility, EPA initiated consultation with the California State Historic Preservation Officer (SHPO). EPA requested consultation with Tribes that may attach religious or cultural significance to historic properties that might be affected by the undertaking. EPA identified Tribes based on their historical connection, and current geographic proximity to the area where the project is proposed. Additionally, EPA contacted the National Indian Gaming Commission, the Bureau of Indian Affairs, the Army Corps of Engineers, the Advisory Council on Historic Preservation, Amador County, the Friends of Amador County, and individuals with historic ties to the area for consultation.

Consistent with the provisions of 36 C.F.R. § 800.4, EPA identified the geographic areas that the undertaking may directly or indirectly cause alterations in the character or use of historic properties to determine the area of potential effect (APE). EPA's determination on the scope of the APE is based on an understanding of the proposed project and an understanding of the historic properties of traditional religious and cultural importance. Efforts to identify historic properties pursuant to 36 CFR § 800.4 within the APE of the undertaking have been conducted, resulting in archaeological survey coverage of the APE by archaeologists and other cultural resource professionals[2]. Identification efforts included background research, interviews with

[2] Clark, Matthew R. 2001. *Buena Vista Rancheria Casino Project: Preliminary Evaluative Report of Archaeological Investigations for the Buena Vista Me-Wuk Rancheria Casino Project, Amador County, California.*

persons knowledgeable about local cultural resources, Native American consultation, archaeological surveys, and archaeological excavations.

In a letter dated February 17, 2007, the EPA initiated Section 106 consultation with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800.3(c). The EPA requested SHPO's comments concerning the EPA's proposal to serve as the lead federal agency and the EPA's determination that the proposed project constitutes an undertaking. The EPA also requested SHPO's comments of the scope of historic-property identification efforts conducted thus far and the identification of other potential consulting parties to the Section 106 process[3].

The efforts to identify historic properties in the APE included a review of previous studies conducted on geographic areas that include the entire APE, as well as site-specific field efforts and discussions with Tribes. Identification efforts in the APE are based on previous cultural resource studies which consisted of records searches and literature reviews, archival research, correspondence and interviews with local Native Americans, archaeological surveys, presence/absence test excavations, test excavations, non-invasive burial detection, and remote-sensing surveys.

In addition to the direct APE, EPA determined that the undertaking may indirectly cause alterations in the character or use of historic properties (indirect APE) based on the traditional cultural properties that have been documented through identification efforts. Specifically, EPA has determined that the undertaking may result in visual intrusions and may introduce auditory elements that may affect the character or use of historic and cultural properties. EPA has

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May 30. Holman & Associates, San Francisco. Prepared for Buena Vista Rancheria of Me-Wuk Indians of California, Ione.

Gross, Charlane S., and Steve Heipel. 2000. *Cultural Resources Inventory for the Buena Vista Rancheria, Amador County, California*. November. KEA Environmental, Inc., Sacramento, California. Prepared for Buena Vista Rancheria, Ione, California, and Cascade Entertainment Group, Tiburon, California. On file, North Central Information Center, California Historical Resources Information System, Sacramento (Study 2815).

Johnson, Anne H. 2006. *Historical Perspective on Buena Vista Rancheria and Vicinity.* Pacific Legacy, Cameron Park, California. Prepared for Buena Vista Rancheria, Sacramento, California.

Shapiro, Lisa, Robert Jackson, Sharyn Jones, Jennifer Burns, and Erik Whiteman 2006. *Archaeological Inventory of the Buena Vista Rancheria, Amador County, California.* September. Pacific Legacy, Cameron Park, California. Prepared for The Buena Vista Rancheria of Me-Wuk Indians, Sacramento, California.

Theodoratus, Dorothea, Robert Jackson, Kathleen McBride, and Jennifer Burns. 2006. *Ethnographic and Ethnohistoric Overview for the Buena Vista Rancheria of Me-Wuk Indians, Amador County, California.* October. Pacific Legacy, Cameron Park, California. Prepared for The Buena Vista Rancheria of Me-Wuk Indians, Sacramento, California.

[3] Strauss, Alexis. 2007. Letter Regarding Request for Consultation under the National Historic Preservation Act for an Undertaking at the Buena Vista Rancheria, Amador County, California. February 17. Region IX, United State Environmental Protection Agency, San Francisco. Submitted to Office of Historic Preservation, California Department of Parks and Recreation, Sacramento.

determined that the geographic areas where the undertaking may indirectly affect historic properties.

EPA conducted a series of meetings with interested parties as part of the NHPPA consultation to identify historic properties; determine the Area of Potential Affects; evaluate adverse impacts and to develop a memorandum of agreement (MOA) and historic properties treatment plan (HPTP). EPA facilitated a consultation meeting among the SHPO, the Corps, Buena Vista Rancheria of Me-Wuk Indians, the Ione Band of Miwok Indians, and other Miwok individuals on May 1, 2007. The attending parties are all consulting parties to the Section 106 process or potential consulting parties. The meeting was called to discuss the undertaking's area of potential effects (APE), efforts to identify historic properties, and likely effects of the undertaking on historic properties, should any be identified.

A site visit with interested parties was also conducted to discuss the project and to evaluate the potential impacts of the project on historic properties. The interested parties participating in consultation were the SHPO, Army Corps of Engineers, Amador County, the Ione Band of Miwok Indians, the Jackson Rancheria of Me-Wuk Indians, individuals with historic ties to the area, the historic Band of Miwok Indians, the Friends of Amador County, and the Buena Vista Rancheria.

In a letter dated October 2, 2008, the EPA requested SHPO concurrence in the EPA's determination of the APE, that identification efforts in the APE are adequate, that two identified cultural resources constitute historic properties, that one property located off Reservation does not constitute a historic property, and that the undertaking will adversely affect historic properties and the Buena Vista Peaks (indirect effect). In a response letter dated April 10, 2009 SHPO concurred with EPA in these findings.

As a result of the consultation, a draft Memorandum of Agreement (MOA) with a Historic Properties Treatment Plan (HPTP) has been developed. After the Tribe, in consultation with SHPO, has determined that all measures required in the MOA have been completed, the Tribe will ensure preparation and concurrent distribution to the reviewing parties a draft report that documents the methods and results of implementing the requirements of that stipulation. The Tribe agrees to develop a plan per the HPTP section entitled, "Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects," which formalizes procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural items that may be found during the implementation of the undertaking. Such plan, at a minimum, will include a curation agreement that ensures that all materials and records subject to curation are maintained in accordance with 36 CFR Part 79. Materials recovered from privately owned lands, other than Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, that are to be returned to their owners, will be maintained in accordance with 36 CFR Part 79 until their analyses are complete; The parties to the MOA agree that Native American burials and related items discovered during the implementation of the MOA's measures, at a minimum, will be respectfully treated in accordance with the herein-described plan.

The plan provisions stipulate that Archaeological and Native American on-site monitoring shall be conducted by qualified monitors during all ground-disturbing construction activities on ground that has not been previously and recently disturbed. The Tribe shall retain the services of a professional qualified archaeological firm to conduct a geo-archaeological study within the footprint area of the proposed project. The archaeological firm will conduct research and a field inspection to determine if buried sites are present in areas where Holocene geological deposits will be disturbed by project activities. The *Archaeological Discovery Plan* describes the procedures established to deal with unanticipated discoveries of archaeological resources during the course of project construction. The Tribe shall implement the *Archaeological Discovery Plan* during ground-disturbing construction activities. Procedures to deal with the unanticipated discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony are described below in *Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects.*

If the Tribe determines during the implementation of either the HPTP or the Undertaking that such implementation will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, then the Tribe will order that work be stopped within 100 feet of the newly identified property until a qualified archeologist can assess the significance of the property and, if necessary, develop appropriate treatment measures in consultation with the Signatory Parties and other appropriate parties as required under 36 CFR 800.13(1)(b) Discoveries without prior planning. If EPA determines, after consultation with the Tribe, that a discovered property is eligible for inclusion in the National Register, it shall be treated as such for the purposes of this MOA.

Signatories to the MOA will be the U.S. EPA and the SHPO, with concurring parties expected to include the U.S. Army Corps of Engineers, the Buena Vista Rancheria, the Ione Band of Miwok, the Jackson Rancheria of Me-Wuk, and the County of Amador.

XI. Permit Reopener

The permit contains a reopener clause to allow for modification of the permit if reasonable potential is demonstrated during the life of the permit.

XII. Standard Conditions

Conditions applicable to all NPDES permits are included in accordance with 40 CFR, Part 122.

XIII. Administrative Information

Public Notice
The public notice is the vehicle for informing all interested parties and members of the general public of the contents of a draft NPDES permit or other significant action with respect to an NPDES permit or application. The basic intent of the requirement is to ensure that all interested

parties have an opportunity to comment on significant actions of the permitting agency with respect to a permit application or permit. This permit was public noticed in a local newspaper after a pre-notice review by the applicant and other affected agencies.

Public Comment Period
Rules require that permits be public noticed in a newspaper of general circulation within the area affected by the facility or activity and provide a minimum of 30 calendar days for interested parties to respond in writing to EPA. After the closing of the public comment period, EPA is required to respond to all significant comments at the time a final permit decision is reached or at the same time a final permit is actually issued.

Public Hearing
A public hearing was held on March 21, 2006 in Ione, CA on the proposed permit which was public noticed December 21, 2005. EPA received comments from approximately 30 parties both in writing and in public testimony. All comments presented to EPA during the previous comment period and at the public hearing are considered by EPA in its final decision.

XIV. Additional Information

Additional information relating to this proposed permit may be obtained from the following locations:

U.S. Environmental Protection Agency, Region IX
CWA Standards & Permits Office Mail Code: WTR-5
75 Hawthorne Street
San Francisco, California 94105-3901
Telephone: (415) 972-3518
Attn: John Tinger

XV. Information Sources

While developing effluent limitations, monitoring requirements and special conditions for the draft permit, the following information sources were used:

1. Water Quality Control Plan for the State of California, Region 5, Water Quality Control Board, December 4, 1994.

2. EPA Technical Support Document for Water Quality-based Toxics Control dated March 1991.

3. U.S. EPA NPDES Basic Permit Writers Manual (December 1996).

4. 40 CFR Parts 122, 131, and 133.

5. Interim Final Regions 9 and 10 Guidance for Implementing Whole Effluent Toxicity Testing Programs, May 31, 1996.

6. Permittee submittals to EPA dated May, 2005 (NPDES permit application), July 28, 2005 (email), conversations, and a site visit conducted by EPA staff on April 8, 2005.

7. Archaeological Inventory of the Buena Vista Rancheria, Amador County, California, Project Number 1550-01, October 2005 prepared by Pacific Legacy, Inc.

8. Biological Resource Assessment for the 67 acre Buena Vista Rancheria Project, prepared by North Fork Associates, September 26, 2005.

9. Final Tribal Environmental Impact Report, State Clearinghouse # 2005012029, October, 2005.

Buena Vista Rancheria
NPDES Permit CA0049675
Final Response To Comments Document
June 2010

Written Comments Submitted on 2005 Public Notice

	Commenter	Signed by	Comments Dated	Comments
I	Landowners in Jackson valley	Signed by 9 landowners	12/24/05	1, 2a, 3, 8b
II	Friends of Amador County	Jerry Cassei	12/27/05	1, 4, 8abc
III	Amador County Board of Supervisors	John Hahn email	12/28/05	1,2
IV	California State Senate	Dave Cox	1/5/06	2
V	Amador County Administrative Agency	Patrick Blacklock	1/10/06	1, 4, 5abc, 6abcd, 7abc, 8ad, 9abc, 10
V Appendix a	Amador County Administrative Agency Memo	TO: Paul Klein from Reena Thomas	1/9/06	5cd, 7s, 13abef 14a, 15ac
VI	Oneto Group, Inc	Wes Sage	1/11/06	1, 5a, 8ae, 11, 12
VII	California Regional Water Quality Control Board	Richard McHenry	1/13/06	5d, 7efghijklmnopqr
VIII	Amador County Administrative Agency	Patrick Blacklock	1/22/06	5, 7, 8fg, 11
IX	Amador County Administrative Agency	John Hahn email	1/25/06	2
X	Jackson Valley Irrigation District	George Lambert	1/9/06	1, 2, 5a, 8ae, 11
XI	Amador County Administrative Agency	John Hahn	2/22/06	17
XII	---	Mr. & Mrs. Sparrowk	2/22/06	1,2,3
XIII	U.S. Fish and Wildlife Service	Chris Nagano	3/10/06	6e,f,g
XIV	Amador County, represented by Nielson, Merksamer, etc	Cathy Christian	4/3/06	8h
XV	Amador County, represented by Nielson, Merksamer,	Cathy Christian	3/17/06	

	etc			

Written Comments Submitted at 2006 Public Hearing:

	Commenter	Signed by	Comments
PH – I	Resident	Donnay Ogelvie	3
PH – II	resident	Kim Koziowksy	3, 5treatment
PH-III	California Cattlemen's Association	Tracy Schohr	3, 5treatment
PH-IV	California Cattlemen's Association	Tim Curran	3, 4, 8
PH- V	resident	Jim Skulley	3, 2
PH VI	resident	Wanda Mullin	3, 2, 10, 8h
PH – VII		WKGallagher	3, 2, 18
PH- VIII	Friends of Amador County		3,
PH –IX		WKGallagher	3,2

Oral Comments Submitted at 2006 Public Hearing:

	Commenter	Affiliation	Comments
PH – I	George Harris	Hydroscience Engineers, representing Tribe	N/A Project proponent
PH – II	Doug Brown	Amador County	See written comments
PH-III	George Lambert	Jackson Valley Irrigation District	See written comments
PH-IV	Tim Curran	Cattlemens Association	See written comments
PH- V	Dave Standard	The Oaks	3
PH VI	Lizzy Vant	Resident	3
PH – VII	Samantha Melvin	Resident	3
PH- VIII	Stacey Hoffman	Resident	3
PH –IX	Clay Hoffman	Resident	3
PH – X	Glen Villa Jr	Ione Band of Miwok Indians	3, 9

PH – XI	Lauire Lord	Resident	3
PH – XII	Ray Stacey	Resident	3
PH – XIII	Jerry Cassesi	Friends of Amador County	See written comments
PH – XIV	George Dulas	Resident	3
PH – XV	Jill Curran	Friends of Amador County	See written comments
PH – XVI	Andrea Bonham	Resident	3
PH – XVII	Ed Gonzalez	Resident	3
PH – XVIII	Richard Forster	Amador County Board of Supervisors	See written comments

Written Comments Submitted on 2009 Public Notice

	Commenter	Signed by	Comments Dated	Comments
I – 2009 II- 2009	Amador County	Theodore F. Novelli	August 4, 2009, & August 25, 2009	1
III- 2009	California Sportsfishing Protection Alliance	Bill Jennings	September 2, 2009	5treatment-b, 5treatment-c, 7g, 7k, 5flow, 7t,
IV-2009	Landowner	Edwin R Gonzalez	August 28, 2009	8a, 1
V – 2009	Amador County	Martha Jeanne Shaver	September 4, 2009	11b, 7u, 5treatmentd, 7v, vn, 7k, 7w, 7x, 7l, 7g, 8g, 7z, 7z1, 8f, 17a, 5treatment-b, 17b, 12b, 12c 10
VI-2009	Resident	Glen Villa	September 3, 2009	18, 3
VII-2009	Ione Band of Miwok Indians *Note: comment submitted after close of comment period.*	William Wood, Holland & Knight	October 15, 2009	18, 3

1 –PUBLIC HEARING

Comment: *Request EPA hold a Public Hearing and/or request extension to comment period.*

RESPONSE:

EPA first proposed the NPDES permit on December 21, 2005. Due to the significant public interest in the process, EPA held a public hearing on March 21, 2006 in Ione, CA, and extended the comment period until the hearing. EPA estimates over 150 people attended the hearing. After the initial public comment period, the Tribe prepared a new Tribal Environmental Impact Statement in accordance with the provisions of the gaming compact with the State of California, and EPA conducted a consultation under the National Historic Preservation Act. On August 5, 2009, EPA issued a public notice soliciting additional comments on the draft permit, and specified that all additional comments received within 30 days would be considered. During the 2009 public comment period, Amador County requested that EPA hold a second public hearing. EPA has determined that the prior public hearing and two public comment periods have provided appropriate opportunity for public participation, and that convening an additional public hearing is not warranted. See, 40 CFR 124.12.

2. TEIR

2a Comment: *EPA should wait until a final Tribal Environmental Impact Report ("TEIR") is completed.*

RESPONSE:

EPA issued its August 5, 2009 public notice soliciting additional comment on the permit after the Tribe completed a final TEIR.

2b Comment: *on what basis are wastewater flow rates determined without TEIR ?*

RESPONSE:

EPA issued its August 5, 2009 public notice soliciting additional comment on the permit after the Tribe completed a final TEIR. The permit limitations are based on flow rates identified by the applicant in its NPDES Form 1 and Form 2A applications and in subsequent communications. The size of the facility was decreased as a result of negotiations between the County of Amador and the Tribe under the Intergovernmental Services Agreement (ISA). EPA has incorporated these changes into the final permit and therefore the allowable flow rates were decreased in the final permit. The permit establishes mass based limitations based on the design flow of the wastewater treatment system.

3. OPPOSE

Comment: *Oppose issuing a NPDES permit to the Tribe.*

RESPONSE:

Comments noted. In EPA's final decision, EPA has determined the permit complies with all components of the Clean Water Act (CWA) for the protection of human health and the environment. The permit contains effluent limitations, monitoring conditions, and reporting requirements sufficient to ensure that all requirements will be met.

4. PUBLIC NOTIFICATION

Comment: The public and local landowners were not adequately notified of proposal.

RESPONSE:

In accordance with 40 CFR 124.10, EPA published a notice of the 2005 proposed permit in the December 21, 2005, *Amador County Ledger Dispatch*, and sent individual notices to known interested parties directly by e-mail and/or direct mailings. In additional, EPA published a second notice in the *Amador County Ledger Dispatch* advising the public that EPA would hold a hearing on the proposed action on March 21, 2006, and that the comment period was re-opened until that date. EPA also sent additional notice of the March 21, 2006 hearing and extended comment period to interested persons by e-mail and/or direct mailings. EPA estimates that over 150 people attended the March 26, 2006 public hearing.

EPA issued a further public notice dated August 5, 2009, by e-mail and/or direct mailings to all previous commenters and all persons who provided contact information at the prior public hearing. The August 5, 2009 notice solicited additional comment on the draft permit, and indicated that all comments received within 30 days would be considered, in addition to all comments received during the 2005 comment period and the March 26, 2006 public hearing. EPA believes that it has provided adequate public notice. See, 40 CFR 124.10.

5. ADEQUACY OF WASTEWATER TREATMENT SYSTEM

FLOW calculations

5.flow a - Comment: The system does not have adequate capacity to treat peak weekend flows. From the description in the Statement of Basis, the peak flow is 350,000 gallons per day (gpd), aeration basins are 57,600 gallons each, and have an average daily residence time of approximately 24 hours. Based on this residence time, the two parallel aeration basins only have sufficient capacity to accommodate 115,200 gallons of wastewater per day. The system does not have adequate capacity to accommodate the average annual flow of 120,000 gpd and is substantially undersized to accommodate projected average weekend flow of 180,00 gpd and peak flows of 350,000.

RESPONSE: As described in Section III of the final fact sheet, the facility at Phase II of the project is projected to have an average annual flow of 100,000 gallons per day and a peak weekend flow of 160,000 gallons per day. The projected volume has decreased as a result of final project design.

The WWTP will have adequate capacity to treat the projected peak weekend flows for the facility. For Phase 1 of the project, the wastewater treatment plant will have two fully redundant treatment process trains with a biological process and membrane filtration capacity of 60,000 gpd each. The total combined treatment capacity of the Phase 1 wastewater treatment plant will be 120,000 gpd.

For Phase 2 of the project, the same treatment trains will be used with equipment upgrades to increase the treatment capacity to two fully redundant trains with a treatment capacity of 100,000 gpd each. The total combined treatment capacity of the Phase 2 wastewater treatment plant will be 200,000 gpd. The plant's treatment capacity of 200,000 gpd is 25% greater than projected peak

weekend flows of 160,000 gpd. The WWTP will have adequate treatment capacity for treating sustained weekend flows.

The WWTP will be designed and permitted for 200,000 gpd, and flows will at no time exceed the 200,000 gpd limit. Also, see response below.

5flow a.1 - Comment: No information was provided regarding the volume of stormwater collected and directed back to the plant.

RESPONSE:

The volume of stormwater collected and directed back to the plant will be minimal. Stormwater from the immediate vicinity of the WWTP will be collected and directed back to the plant as a standard practice to treat any pollutants that may result from the operation of the WWTP. As detailed in the response above, there is sufficient contingency in the design capacity of the WWTP to handle this de minimus volume of additional flow. Also, see responses to flow comments below.

5.flow a - Comment: The treatment system lacks sufficient emergency storage when a problem occurs. With peak flows of 350,000 the system could only operate 5 hours before it overflowed.

RESPONSE:

The Buena Vista WWTP has sufficient emergency storage capacity. The WWTP has two emergency storage basins (ESBs), one at the end of the process trains and one along the side of the process trains. ESB 1 will have an overflow capacity of 160,000 gallons. There is an additional overflow capacity of 113,000 gallons in ESB 2. These basins provide the following hours of emergency storage for Phase 2 flows.

Table 1: Hours of Emergency Storage for the Buena Vista WWTP

Phase 2 Flows	ESB 1 (hrs)	ESB 2 (hrs)	Total (hrs)
Weekday – 90,000 gpd	42.7	30.1	72.8
Average – 100,000 gpd	38.4	27.1	65.5
Weekend – 160,000 gpd	24.0	17.0	41.0
Design Capacity – 200,000 gpd	19.2	13.6	32.8

As previously discussed, the WWTP is being designed with two completely redundant process trains so the probability of a complete plant failure is remote. In the event that both process trains should fail, the Tribe would therefore have at least 65 hours of emergency storage time under average day flow conditions in which to either repair one or both of the process trains or to provide for alternative temporary wastewater disposal (e.g. portable toilet facilities). In the unlikely event that all of these contingencies fail, then it should be recognized that unlike a municipal wastewater system where flows must be maintained, a casino can shut down operations (including wastewater flows) until such time as the wastewater treatment problems are resolved. The Tribe is prohibited from discharging untreated or partially treated wastewater to waters of the U.S. simply for the purpose of maintaining casino operations (See Standard Federal NPDES Permit Conditions, Attachment to Permit).

5flow b – Comment: There are discrepancies in the flow rates used for the draft permit (120,000 gpd avg; 180,000 gpd weekend) and the feasibility study (150,000 gpd avg; 250,000 weekend).
RESPONSE:
The flow limitations in the permit are based upon the permit application and subsequent sizing criteria submitted by the applicant, not the feasibility study. As previously noted, the size of the facility and subsequently the design size of the WWTP was reduced as a result of the Intergovernmental Services Agreement (ISA).

5flow c – Comment: It is unclear how the design peak weekend flow of 350,000 gpd was calculated.
RESPONSE:
Projected peak flows were described in the Engineering Report submitted as part of the permit application and in supplementary material. The average weekday and peak weekend flows were developed from analysis of similar gaming facilities. Based on projected water usage by the project, daily wastewater demands for weekday and weekend usage are summarized in **Table 2**. As noted in Response 2b, the size of the facility was reduced during negotiations with the County of Amador; therefore, the projected flows in Table 2 have also been reduced for the final permit. The average annual flow is a weighted average of the weekday and weekend flows for the project, and is largely based on historical flows generated from similar gaming facility operations. Phase 1 in **Table 1** is the project agreed to in the ISA. Phase 2 is also in the ISA under Item No. 6: "Future Negotiations for Project Expansion". The design capacity provides additional contingency capacity. These wastewater flow rates are consistent with wastewater flow rates observed at similar gaming facilities in northern California, such as Thunder Valley Casino, Cache Creek Casino Resort, and Jackson Rancheria Casino and Hotel.

Table 2: Projected Flows and Design Capacity for the Buena Vista WWTP

	Weekday Flow (gpd)	Weekend Flow (gpd)	Annual Average Flow (gpd)
Phase 1 Daily Flows	50,000	100,000	60,000
Phase 2 Daily Flows	90,000	160,000	100,000
Design Capacity[1]		200,000	

[1]WWTP sized based on the Phase 2 weekend capacity plus contingency capacity.
gpd: Gallons per day
All flows rounded to the nearest 10,000 gpd.

5flowd – Comment: The capacities of the various process components do not appear to provide for treatment of 350,000 gpd, especially on consecutive weekend days. At a sustained flow of 230,000 the residence time is reduced to approximately 12 hours and at a flow of 350,000 gpd the residence time is reduced to less than 8 hours. Is this sufficient to treat the projected flows ?
RESPONSE:
All treatment plant processes in the WWTP are sized for a peak flow of 200,000 gpd as discussed above. **Table 3** below summarizes the key design parameters for calculating hydraulic retention

time (HRT). The total HRT for this plant will be 20.8 hours at a peak flow of 200,000 gpd. This is a typical HRT for a membrane bioreactor (MBR) wastewater treatment plant.

Table 3: Size Criteria for the Buena Vista WWTP

Basin	No. Trains	Length (ft)	Width (ft)	Depth (ft)	Volume (gal)	HRT (hr)
Anoxic	2	28	12	7	35,188	4.2
Pre-Aeration	2	33	12	17	100,716	12.1
MBR	2	15	12	14	37,698	4.5
Total					173,602	20.8

TREATMENT SYSTEM

5treatment-a – Comment: please explain the term "mixed liquor" used in the Statement of Basis.

RESPONSE:

Mixed Liquor is a commonly used technical term in the wastewater industry for the mixed-liquor suspended solids (MLSS) portion of suspended activated sludge. Activated sludge is the living population of micro-organisms in a biological wastewater treatment facility that metabolize the carbonaceous and nitrogenous fraction of the wastewater.

5treatment-b - Comment: The very similar designed facility at Thunder Valley has been shown to be incapable of achieving compliance with California Toxic Rule (CTR) constituent limitations even using a finer membrane. A treatability analysis should be required before proceeding with a "new" system which may be immediately shown to be incapable of meeting CTR-based limitations. The Thunder Valley WWTP utilizes a 0.1-micron membrane and the proposed WWTP at the Buena Vista Casino has been designed to use a 0.3-micron flat plate membrane.

Reliability of the proposed waste water treatment plant is of great concern. In addition to the example cited above, many other instances of plant upset or other system failures have been documented, most notably in a virtually identical plant designed for Thunder Valley Casino. It is unclear whether any provision for storage or removal of wastewater that cannot be treated to comply with discharge requirements is to be required. If inadequate storage is provided; ongoing generation of wastewater must be hauled to another waste water treatment plant or it will be discharged in violation of the Proposed Permit. Hauling would create additional environmental impacts, and feasible destinations for hauled waste water have often been difficult or impossible to locate in the past. The Proposed Permit should include a requirement for adequate contingency planning in recognition of the potential for plant upset.

RESPONSE:

EPA agrees that the design of the wastewater treatment plant serving the Thunder Valley Casino is very similar to the proposed design of the WWTP for the Buena Vista Casino, however EPA does not agree that the Thunder Valley has been shown to be incapable of achieving compliance with California Toxic Rule (CTR) criteria. The historical performance of the Thunder Valley WWTP in complying with its NPDES permit can serve as good indicator of the anticipated performance of the Buena Vista Casino WWTP. The two facilities are similar in design and both treat wastewater from

a Casino. The California Regional Water Quality Control Board (RWQCB), Central Valley Region issued the NPDES permit for the Thunder Valley WWTP. Key water quality data for the Thunder Valley WWTP in 2008 are summarized in **Table 4**: total suspended solids (TSS) and biochemical oxygen demand (BOD) levels in the effluent produced at this plant are at Non-Detect levels and turbidities are consistently below 0.1 NTU.

Table 4: **2008** Average Effluent water quality data for the Thunder Valley WWTP

Month	TSS (mg/l)	BOD (mg/l)	Turbidity (NTU)	Ammonia (mg/l)
January	ND	ND	0.05	ND
February	ND	ND	0.05	0.11
March	ND	ND	0.05	ND
April	ND	ND	0.05	ND
May	ND	ND	0.07	ND
June	ND	ND	0.08	0.14
July	ND	ND	0.06	0.13
August	ND	ND	0.06	0.12
September	ND	ND	0.07	ND
October	ND	ND	0.06	ND
November	ND	ND	0.07	ND
December	ND	ND	0.09	ND
Annual Average	ND	ND	0.06	0.11

With regard to membrane pore size, the proposed Buena Vista Casino WWTP will utilize nominal 0.4-micron flat plate membranes while the Thunder Valley WWTP uses nominal 0.1-micron hollow fiber membranes. Other than that, the two WWTP designs are essentially the same. RWQCB staff have questioned whether the Buena Vista Casino WWTP will perform less well than the Thunder Valley WWTP because of the larger membrane pore size. EPA concludes that the difference in membrane pore size will not cause the quality of the effluent from the Buena Vista Casino WWTP to be materially different than the Thunder Valley WWTP's effluent quality. The membranes in a MBR plant are used for solids separation while dissolved constituents will generally pass through either type of membrane. The 0.4 micron size is well within the range for effective microfiltration. When the membranes are submerged in the mixed liquor, the effective pore size becomes 0.1 micon because of the biofilm that forms on the membrane surface. The membranes used at the Thunder Valley WWTP and the membranes that will be used at the Buena Vista Casino WWTP will each strain solids at a molecular level, and effluent solids will be negligible after passing through either type of membrane. The ability of each type of membrane to remove constituents that bind to solids are essentially equivalent.

Thunder Valley Casino was required to begin monthly sampling of its effluent constituents in April 2005. In May 2005 Thunder Valley Casino began using water supplied by the Placer County Water Agency, in part to avoid high levels of boron and electrical conductivity (EC) in local well water. The Thunder Valley plant has consistently met discharge requirements and no enforcement actions have occurred since 2005. The results of monthly effluent quality analyses for 2008 are representative of the WWTP's current effluent quality. The results of this sampling are summarized in **Table 5** below.

Table 5: Regulated Constituents for Thunder Valley WWTP in 2008 (Ref: Thunder Valley WWTP 2008 Annual Report)

Constituent	Limit	2008											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Bromoform, ug/l	21	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Dibromochloro-methane, ug/l	87	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Dichlorobro-momethane, ug/l	81	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Total Trihalo-methanes, ug/l	80	ND	ND	0.95	ND	ND	ND	ND	ND	ND	ND	0.55	ND
Persistent Chlor-inated Hydro-carbon Pesticides, ug/l	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Atrazine, ug/l	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron, ug/l	700	ND	ND	ND	ND	ND	ND	0.0074	ND	0.0085	ND	ND	ND
Fluoride, ug/l	1,000	ND	ND	ND	ND	ND	ND	0.08	ND	ND	ND	570	ND
Methylene Blue Active Substances (MBAS), ug/l	500	ND	ND	ND	ND	ND	ND	ND	ND	ND	140	ND	ND
Nitrate, mg/l	10	.860	1.5	2.1	2.1	1.7	2.3	2.4	2.2	2.4	3.2	3.0	2,100
Ammonia, mg/l	0.42	ND	0.11	ND	ND	ND	0.14	0.13	0.12	ND	ND	ND	ND
Sulfate, mg/l	250	13	20	16	16	14	15	15	13	16	13	17	14,000
Arsenic, ug/l	10	ND	ND	ND	ND	ND	ND	0.58	ND	0.75	ND	ND	ND
Total Chlorine Residual, mg/l	0.01	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Electrical Conductivity, umhos/cm	700	458	458	434	444	448	475	453	448	631	648	455	421
Aluminum, ug/l	71	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	67	ND
Copper, ug/l	72	11	7.5	12	6.7	6	7	7.1	8.2	9.8	9.7	7.9	6.3

Therefore, based on the level of treatment proposed to be provided at the Buena Vista Casino WWTP, and based on a comparison of existing data for similar operations, the WWTP is expected to comply with all water quality standard-derived effluent limitations and EPA's requirements for the treatment of domestic wastewater. The permit requires monitoring of the effluent to ensure that the effluent limitations and treatment requirements are met and that the system is operated correctly.

5- treatment c Comment - Generally, there is an overlap between the capabilities of micro- and ultra- filtration systems in their capabilities at removing viruses. The capability of a microfiltration system is thought to be limited for virus removal, which is why such systems have been followed by ultraviolet light disinfection. The Fact Sheet discussion of disinfection could be considered misleading in stating that bacteria removal eliminates the need for disinfection. It is critical information with respect to the capabilities of the wastewater treatment system whether the membrane pore size is 0.1 or 0.4 microns, which is absent from the proposed Permit and Fact Sheet. We strongly recommend that a seeded virus test be performed, once the system is operational, in coordination with the California Department of Public Health to determine the virus removal capability of the system and its equivalency to "tertiary" treatment.

RESPONSE:

The final effluent will be disinfected through UV disinfection consisting of 2 UV units in series (see Fact Sheet, page 3). Therefore, the system will not rely solely on the ability of the MBR units and the pore size of the membranes to remove bacteria. See response above (5 treatment-b) for a further discussion of the ability of the WWTP to achieve effluent quality which ensures that all effluent limitations are met. The permit establishes effluent limitations and monitoring requirements for total coliform bacteria, TSS, and turbidity. Additionally, the permit establishes effluent limitations and monitoring requirements for chlorine residual. EPA does not believe that seeded virus tests are necessary to either ensure proper operation of the WWTP, or to demonstrate that the WWTP has the capability to meet disinfection standards.

The WWTP will be designed to produce effluent meeting California's criteria for Disinfected Tertiary Recycled Water (also known as "tertiary 2.2 recycled water"). See, 22 Cal. Code of Regs. § 60301.230. The proposed wastewater treatment technology has been recognized by California Department of Health Services (DHS) as acceptable for compliance with the treatment requirements of the State's Recycled Water Criteria. See, DHS, Division of Drinking Water and Environmental Management, "Treatment Technology Report for Recycled Water", January 2007 (available at http://www.cdph.ca.gov/certlic/drinkingwater/Documents/DWdocuments/treatmenttechnology.pdf), pp. 22 – 23.

The baffling of recycled water storage tanks is a common practice in the industry. The recycled water storage tank to be used at the Buena Vista Casino will have a theoretical detention time of over 10 hours even when the tank is half full. The modal contact time is therefore anticipated to be well in excess of the minimum modal contact time of 90 minutes required by California's Water Recycling Criteria. See, 22 Cal. Code of Regs. § 60301.230.

5 treatment d – Comment: the proposed permit does not contain effluent limits for flow rate
RESPONSE:
A limit for flow has been incorporated into the final permit. See, Permit, Part I.A.

6. EFFECTS TO ENDANGERED SPECIES
6a comment - On-site pond may provide habitat/breeding area for red-legged frog and California tiger salamander.
6b comment - Drainage flows through off-site areas of critical habitat of California tiger salamander and may have adverse affect.
6c. comment - Effects on plant species that may be affected were not evaluated.
6d. comment - EPA has not initiated formal consultation with USFWS and may be in violation of Section 7 of ESA.
6e. comment : The casino, parking lot, wastewater treatment plant discharge, stormwater, and road widening activities are all interrelated and independent actions and should be analyzed comprehensively rather than in a piece-meal manner.
6f. comment: The direct effects of road widening and the indirect effects of increased traffic and wider roads on listed species should be considered.
6g. comment: The conclusion that the California tiger salamanders are unlikely to be present within the project area is not supported by the available information.

RESPONSE to Endangered Species Comments:
See Section IX "Threatened and Endangered Species" of the 2009 proposed fact sheet, which was updated to respond to these comments made in 2006 and those received during the TEIR process. No additional comments regarding endangered species were received on the 2009 public noticed permit.

7. COMPLIANCE WITH WATER QUALITY STANDARDS /BASIN PLAN
7 comment - The discharge likely will cause off-site water quality impacts.
RESPONSE:
As described in the Fact Sheet, the permit establishes effluent limitations and monitoring conditions to protect the beneficial uses of receiving waters. The permit establishes effluent limitations that will apply at the point of discharge, Outfall 001. See, Permit, page 1, and Part I.A. The effluent limitations have been established without allowance for dilution to ensure water quality standards are met in downstream receiving waters.

EPA has concluded effluent limitations are stringent enough to ensure that the receiving water will have, at all locations, pollutant concentrations less than those listed in the CTR for all pollutants addressed by the CTR. EPA further believes that those effluent limitations are stringent enough to ensure that the receiving water will meet, at all locations, the water quality conditions described in the State-established water quality standards that govern the downstream reaches of Jackson Creek. See, 40 CFR 122.4, 122.44(d), and 131.38. See also, *Arkansas v. Oklahoma*, 503 U.S. 91 (1992) (addressing authority to apply water quality standards of downstream jurisdiction). EPA concludes that the permit adequately addresses off-site water quality impacts.

EPA is issuing the Permit to the Buena Vista Rancheria pursuant to 40 CFR 123.1(h), which provides that EPA will 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." 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 and the Tribe does not currently have its own federally approved water quality standards ("WQS"). In this instance, consistent with 40 C.F.R §§ 122.4 and 122.44(d), EPA 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 the State of California's federally-approved water quality standards found in the Basin Plan for the Sacramento and San Joaquin River Basins ("Basin Plan"), both of which are applicable to waters downstream of tribal boundaries.

The water quality standards found in the Basin Plan include use designations and numeric and/or narrative water quality criteria. The Basin Plan provides that existing and potential beneficial uses of any specifically identified water body generally apply to its tributary streams, which currently apply to surface water of the basin plan. The applicable water quality standards in the CTR and Basin Plan which have been applied in the Permit are those that apply to the Mokelumne River (Camanche Reservior to Delta) and its tributaries. The beneficial uses designated for this surface water body are Agriculture (AGR), Water Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or early Development (SPWN), and Wildlife Habitat (WILD). Additionally, the California State Water Resources Control Board Resolution 88-63, incorporated in to the Basin Plan pursuant to Regional Board Resolution 89-056, requires that municipal and domestic supply (MUN) use be applied to surface waterbodies that do not have beneficial uses listed in Table II-I of the Basin Plan.

7a comment – The Basin Plan has a policy intent to consolidate wastewater collection and treatment facilities. A NPDES permit for Buena Vista Rancheria would violate this consolidation policy.

RESPONSE:

While EPA agrees that consolidating wastewater collection and treatment facilities may be preferable in certain instances, EPA does not believe consolidating the wastewater treatment collection system from the Flying Cloud Casino with other sewerage systems is a viable option, based on the distance to other treatment facilities and potential difficulties in obtaining permission from a local POTW. Moreover, EPA interprets the Basin Plan's "policy intent" to consolidate wastewater collection and treatment facilities as a goal and not as federally enforceable or adopted rule.

7.b comment :–Spray fields are located upstream of natural spring and existing pond. Surface flows from the spray fields may impact the spring and pond, especially during wet weather and due to the steep slope of the upgradient areas.

RESPONSE:

The permit provides that "direct or windblown spray of reclaimed water shall not enter surface watercourses" (Permit, Part II.C.6), and establishes additional requirements, including mandatory buffer zones, that EPA concludes are adequate to control adverse impacts to the spring and pond resulting from the use of reclaimed water. See, Permit, Part II.C.

7.c comment– Hydroscience report states that spray fields will also be located on southern portion of the property, but Statement of Basis is not consistent with this.

RESPONSE:

Sprayfields may be located on the southern portion of the property. The operations of all sprayfields using reclaimed water are governed by the permit's requirements to prevent the release to waters of the U.S. See, Permit, Part II.C.

7.d comment - The Statement of Basis says that an assessment of priority pollutants listed in the CTR be conducted within 90 days of startup of the new permit, however, the permit "requirement" cannot be located within the body of the proposed permit

RESPONSE:

Included in the draft and final permit is a provision requiring that the permittee conduct effluent monitoring, during the first 90 days of discharge from the new wastewater treatment plant and in the third and fifth year of the permit term, for specified parameters. See, draft and final Permit, Part I.B. The parameters that must be monitored include "the full list of priority pollutants as listed in the Code of Federal Regulations (CFR) at 40 CFR Part 122 Appendix J, Table 2". Permit, Part I.B.1. Each of the pollutants listed in the CTR are also listed in 40 CFR Part 122 Appendix J, Table 2.

7.e comment – We recommend monitoring be conducted for the Regional Board's expanded list of pollutants instead of just the priority pollutants. Sampling and analysis of the expanded list was required quarterly for one year of all NPDES dischargers regulated by the Sacramento office.

RESPONSE:

Based on the nature of the raw wastewater, the high level of treatment to be achieved, and the general characteristics of treated domestic wastewater, EPA believes monitoring for the full suite of priority pollutants, along with Whole Effluent Toxicity testing, is an appropriate level of monitoring to assure the discharge does not have the reasonable potential to cause or contribute to a water quality impairment. EPA's proposed monitoring is consistent with that of other POTWs of comparable size.

7.f comment – Although UV is used as a disinfectant, it is our experience that chlorine is routinely used for odor control, filter backwash, and cleaning at the plant site. We recommend that an effluent limit for total chlorine be included in the permit due to the routine use of chlorine and its potential toxicity and that monitoring be continuous.

RESPONSE:

EPA agrees that the permit should establish an effluent limitation and monitoring for residual chlorine. The permit as issued requires that the discharge not exceed an average monthly concentration limit of 0.01 mg/L, and not exceed a daily maximum concentration limit of 0.02 mg/L, for residual chlorine. The permit further requires that the permittee monitor for residual chlorine one per week. Permit, Part I.A. EPA concludes that weekly monitoring will be

sufficient to provide data representative of the WWTP's discharge. If circumstances indicate that more frequent monitoring is warranted, the permit's monitoring requirements may be modified pursuant to Permit, Part III.F.

7.g comment - It is reasonable to assume that aluminum, boron, fluoride, sulfate, arsenic, and electrical conductivity are products of the water supply at the Thunder Valley Casino and may not be reasonably present in the discharge from the Buena Vista Casino WWTP.

RESPONSE:

EPA agrees that these pollutants may not be present in the discharge from the Buena Vista Casino WWTP in detectable concentrations after the WWTP begins operation.

Note the permit requires monitoring be conducted for the full list of priority pollutants in addition to EC, WET, and nitrate, among others. If that monitoring data, or other new information, indicates that modification of the permit is warranted pursuant to 40 CFR 122.62(a), additional or more stringent effluent limits may be added. See also, Permit, Part II.D.

7.h comment - Bromoform, dibromochloromethane, dichlorobromomethane and total chlorine are chlorination by products and it may be reasonable to include Effluent Limitations based on the use of chlorine at the WWTP.

RESPONSE:

Chlorination by-products may be formed in WWTP effluent when organic materials present in the effluent are chlorinated for disinfection. However, the proposed WWTP will use UV treatment, not chlorine, for disinfection. UV disinfection is commonly used to prevent the formation of by-products like bromoform, dibromochloromethane, dichlorobromomethane, and therefore EPA does not believe there is a reasonable potential for chlorination by-products to be formed in the effluent at levels that have the reasonable potential to cause or contribute to an exceedance of water quality standards.

Small levels of chlorine addition may be used in ancillary activities at the site for cleaning. However, this usage will be minimal and will not cause the levels of by-products present when chlorine is used for primary disinfection. EPA has placed chlorine residual limits in the permit, and has also required that a log be maintained of any chlorine addition to the wastewater discharge. The permit requires that monitoring be conducted for these and other constituents. If that monitoring data, or other new information, indicates that modification of the permit is warranted pursuant to 40 CFR 122.62(a), additional or more stringent effluent limits may be added. See also, Permit, Part II.D.

7.i comment: It appears that copper is not present at elevated levels in the water supply at Thunder Valley Casino, but may be coming from water distribution copper piping within the Casino, which could be similar due to construction practices at the Casinos.

RESPONSE:

EPA agrees that copper may not be present in the discharge from the Buena Vista Casino WWTP in detectable concentrations after the WWTP begins operation. However, as a new discharger, the permit requires that monitoring be conducted for copper. If that monitoring data, or other new information, indicates that modification of the permit is warranted pursuant to 40 CFR 122.62(a), additional or more stringent effluent limits may be added. See also, Permit, Part II.D.

7.j comment - Persistent chlorinated hydrocarbon pesticides, atrazine and MBAS are likely present from uses within the Thunder Valley Casino, which could be similar at the Buena Vista Casino.

RESPONSE:

EPA believes that persistent chlorinated hydrocarbon pesticides, atrazine or MBAS ("methylene blue active substances") will not be present in the discharge from the Buena Vista Casino WWTP in detectable concentrations. There is no evidence to indicate that pesticides or MBAS will be used at the Casino and will be present in the raw wastewater. Regardless, EPA has required that the permittee monitor for all parameters listed in 40 CFR Part 122, Appendix J, Table 2, which include more common pesticides and other organic pollutants. See, Permit, Part I. A. and B.

7.k comment – The limits for BOD and TSS should be based on the capability of the treatment plant to achieve 10 mg/L as a monthly average instead of the secondary treatment standards at 40 CFR 122.44

RESPONSE:

The permit includes effluent limitations for BOD and TSS that are derived from EPA's Secondary Treatment Regulation, 40 CFR Part 133. See 40 CFR 122.44, 125.3 and 133.102, and Permit, Part I.A. NPDES permits must also include requirements more stringent than technology- based effluent limitations, if more stringent requirements are needed to achieve water quality standards. See, 40 CFR 122.44(d). However, EPA concludes that more stringent limitations on BOD or TSS are not needed with respect to the Buena Vista WWTP in order to achieve water quality standards. As EPA noted in the fact sheet, the WWTP is expected to achieve a much higher level of treatment for BOD and TSS than is required by the permit.

7.l comment – Monitoring should be conducted for both acute and chronic toxicity. Monitoring for toxicity should be consistent with requirements for other POTWs in the region, which require quarterly testing for both acute and chronic. Yearly toxicity monitoring is insufficient to determine trends and is not necessarily representative of the discharge.

RESPONSE:

The permit requires weekly monitoring for a variety of parameters. Permit, Part I.A. In addition, the permit requires that, within 90 days after the discharge begins, and thereafter during the third and fifth year of the permit term, monitoring be conducted for each of the parameters listed in 40 CFR Part 122, Appendix J, Table 2. Permit, Part I. A. and B. The permit further requires that chronic toxicity monitoring be conducted using whole effluent toxicity testing. See, Permit, Part I. A. and B, and Part IV. The whole effluent toxicity tests must be conducted during the first, third and fifth year of the permit term (*id.*), and the permit requires additional toxicity testing if a chronic toxicity monitoring trigger is exceeded. See, Permit, Part IV.B, D and E, and Permit Part III.F.

In light of (1) the weekly monitoring requirements, (2) the requirement to monitor for all parameters listed in 40 CFR Part 122, Appendix J, Table 2, within 90 days after the discharge begins, (3) the whole effluent toxicity testing requirements, and (4) the provisions under which additional monitoring may be required if warranted, EPA believes that the monitoring-related

requirements are sufficient to yield data representative of the discharge, and to meet the requirements of 40 CFR 122.44(i) and 122.48.

In instances where the chronic test is performed on an effluent without an allowance for dilution, a separate acute toxicity test is unnecessary. The chronic test is, by definition, more stringent than the acute test thereby rendering the acute test unnecessary. For example, if the wastewater results in acute toxicity during a chronic test, the result of the test will be failure due to lethality. The chronic toxicity test measures the effects on organisms less severe than acute toxicity (such as growth and reproduction) and will therefore measure both acute affects and sublethal effects. Therefore, EPA has not included acute toxicity testing in addition to chronic toxicity testing.

7.m comment – The permit contains receiving water quality limitations but does not include receiving water monitoring requirements. The permit should include monitoring of the receiving water to comply with the Basin Plan consistent with permit adopted in the Central Valley Region.

RESPONSE:

The permit includes receiving water monitoring requirements. Permit, Part I.B.2 states:

> "2. The permittee shall conduct weekly receiving water quality monitoring for pH, dissolved oxygen, turbidity, total dissolved solids, and temperature at the following locations when water is present in the receiving water:
>
> M001U - Outfall 001 Upstream: *Approximately 10' upstream of location where discharge enters receiving water.*
>
> M001D - Outfall 001 Downstream: *Approximately 100' downstream of location where discharge enters receiving water.*" [Emphasis added.]

See also, response to comment 7, above.

7.n comment – The cited ammonia limitations were not attached in the draft permit. However, U.S. EPA's ambient water quality criteria for the protection of freshwater aquatic life for ammonia are presented as 1-hour, 4-day and 30-day averages. The permit does not state how the "daily maximum", defined as a daily average, ammonia limitation was derived. The conversion of the 1-hour average limitation for both chlorine and ammonia to a daily maximum is not practicable. Chlorine and ammonia can produce immediate toxicity in effluent and a short compliance period, the 1-hour average, is warranted.

RESPONSE:

The effluent limits established in the permit are consistent with EPA's "DRAFT 2009 UPDATE AQUATIC LIFE AMBIENT WATER QUALITY CRITERIA FOR AMMONIA – FRESHWATER", EPA-822-D-09-001, December 2009, available at http://www.epa.gov/waterscience/criteria/ammonia/2009update.pdf. The derivation of the daily maximum recommended water quality criteria are provided in EPA's criteria document.

The final permit establishes an average monthly concentration limit for ammonia of 1.72 mg/L, and a daily maximum concentration limit for ammonia of 3.45 mg/L, consistent with EPA's recommended criteria and effluent limitations established for similar POTWs in the region by the State of California. Permit, Part I.A. The method by which EPA derived the limits for ammonia is described in the Fact Sheet accompanying the final permit. EPA concludes that the final permit's average monthly concentration limit for ammonia and daily maximum concentration limit for ammonia are sufficiently stringent to meet the applicable water quality standards, as required by 40 CFR 122.44(d). See also, response to comment 7, above.

7. o comment - The proposed Monitoring and Reporting program established weekly sampling for both ammonia and nitrate. Nitrification and denitrification are critical processes to remove toxic levels of ammonia and nutrients in the discharge. We routinely include requirements for monitoring of ammonia and nitrate sampling as verification, the only means readily available, to assure that wastewater treatment systems are being operated in a nitrification/denitrification mode to protect the beneficial uses of the receiving stream. We recommend that the ammonia and nitrate sampling frequency be significantly increased.

RESPONSE:

EPA believes weekly monitoring requirements for ammonia and nitrate is adequate to ensure consistent operation of the WWTP and to demonstrate compliance with water quality standards. EPA believes weekly monitoring requirements are consistent with other POTWs in the region, especially given the comparison of low discharge flow volumes and the high level of treatment achieved thru the membrane bioreactor process as compared to other POTWs. EPA does not believe that requiring more frequent monitoring is warranted.

7.p comment - We recommend that the tertiary level of treatment be maintained as a requirement, with the total coliform limitation of 2.2 /100 ml MPN as a 7-day median, however the supporting justification should be modified or expanded.

RESPONSE:

The final permit retains the requirement that the discharge receive tertiary treatment, and the requirement that total coliform bacteria not exceed 2.2 MPN/ 100 ml as a weekly median. See Permit, Section I.A and II.C. The portion of the Fact Sheet addressing the requirement pertaining to total coliform bacteria has been revised and clarified.

7. q –comment - Ammonia, nitrate, oil and grease, settleable solids and total dissolved solids should have mass limitations included in the proposed permit.

RESPONSE:

EPA has revised the permit to include mass limits for Ammonia, Nitrate, and Oil and Grease. See, Permit, Part I.A. EPA does not agree that mass limits for settleable solids are warranted because settleable solids are measured using a visual-based test and mass settleable solids is not a meaningful measurement parameter. For dissolved solids, EPA has established monitoring for mass loadings consistent with concentration monitoring. EPA concludes that the final permit's concentration limits and mass based limits are sufficiently stringent to assure that the applicable water quality standards will not violated. See, 40 CFR 122.44(d), and response to comment 7, above. The final permit requires monitoring for total dissolved solids and other parameters. Accordingly, the permit may be reopened to include mass limits for those parameters if warranted and the conditions in 40 CFR 122.62 or Permit Part II.D are met.

7.r comment - The proposed permit includes discharge limitations for settleable solids of 1 ml/l (monthly average) and 2 ml/l (daily maximum). The Statement of Basis cites a 1979 U.S. EPA Policy memo as the source of information justifying the settleable solids limitations. The Central Valley Regional Water Quality Control Board has been regulating settleable solids at 0.1 ml/l (monthly average) and 0.2 ml/l (daily maximum) for domestic wastewater treatment plants for decades based on the capability of secondary treatment systems. The basis for the settleable solids limit is the Basin Plan water quality objective for settleable material.

RESPONSE:

EPA has revised the concentration limits governing settleable solids. The final permit establishes an average monthly concentration limit of 0.1 ml/L, and a daily maximum concentration limit of 0.2 ml/L. See, Permit, Part I.A.

7s comment - If CTR limits are not reached (based on monitoring requirements) and exceedances occur, what are interim requirements and data for their achievement in the permit ? Monitoring, reporting, and consequences should be more clearly defined.

RESPONSE:

The permit has established effluent limits and monitoring requirements for all parameters which EPA believes have the reasonable potential to cause or contribute to an exceedance of water quality standards. See, Permit, Part I.A.

The permit contains 24 hour reporting requirements for any noncompliance which may endanger human health or the environment. See, Permit, Part III.D.

Any exceedance of an effluent limitation is subject to enforcement under the CWA (see, 33 U.S.C. §§ 1311 and 1319), and EPA has issued guidance and policies regarding its compliance and enforcement programs available at: http://cfpub.epa.gov/compliance/resources/policies/civil/cwa/.

The permit contains a prohibition on discharging wastewater in excess of water quality standards, and contains additional monitoring for all priority pollutants and for chronic toxicity. The permit contains a reopener provision to allow the permit to be reopened and new effluent limitations or monitoring conditions need to be placed in the permit based on additional monitoring data. See, Permit, Part II.D.

7t comment- The Fact Sheet states that for this new discharge where data is not available: "The permittee will be required to conduct a full scan of priority pollutants within 90 days of discharge from the new treatment plant and in the 3rd and 5th year thereafter. Reasonable potential will be re-evaluated at this time and the permit may be re-opened to incorporate new water quality based limits as necessary." We recommend that the number of samples collected be statistically significant to eliminate common argument in California that "there is insufficient data to calculate Effluent Limitations". We ask that nonpriority problematic pollutants, including salts (EC, TDS), ammonia, chlorine, pesticides, aluminum, and constituents with primary and secondary maximum contaminant levels, be sampled at the same time as "priority pollutants. We also recommend that the Fact Sheet be clarified that the results of the first round of sampling, "within 90 days of discharge" will be reviewed, and the permit will be reopened, if necessary, at that time to include protective Effluent Limitations.

RESPONSE:
EPA has issued technical guidance for assessing and regulating discharges of toxic substances to surface waters. Technical Support Document for Water Quality-based Toxics Control (EPA, March 1991) ("TSD"), available at http://www.epa.gov/npdes/pubs/owm0264.pdf. The TSD includes guidance regarding methods for determining the need for permit limits for whole effluent toxicity and for individual toxicants, for facilities where there is no effluent monitoring data, as well as for facilities for which effluent monitoring data exists. See, TSD, pp. 47 – 66. EPA has sought to follow the TSD's guidance, and believes that the permit includes effluent limitations and monitoring sufficient to assure that no water quality standards will be violated due to any toxics discharged from the facility. In light of the array of monitored parameters and their monitoring frequency (see, Permit, Part I.A and B), the further requirements related to whole effluent toxicity testing (Permit, Part IV), the permit provision addressing the Regional Administrator's authority to modify the monitoring requirements (Permit, Part III.F), and the permit provision governing re-opener (Permit, Part II.D), as well as 40 CFR 122.62, EPA does not expect that the monitoring required by the permit will be insufficient to determine if more, or more stringent, effluent limitations are warranted.

EPA notes that the permit requires sampling at least once per week for non-priority pollutants ammonia, EC, nitrate, oil and grease, settleable solids, total dissolved solids, chlorine residual, and turbidity. EPA does not believe it is necessary to add an additional requirement to the permit that these parameters be sampled at the same time as the priority pollutant scan as this is already required in weekly monitoring. Additionally, EPA notes that the list of priority pollutants includes several pesticides, including dieldrin and DDT. EPA does not believe it necessary to include additional monitoring requirements for pesticides in addition to the 126 priority pollutants. EPA does not expect pesticides to be present in detectable quantities in the wastewater at a casino facility, and believes that monitoring for priority pollutants is sufficient to provide an analysis of treated wastewater.

7u – Comment – Antidegredation Analysis
The CW A requires states to adopt, with EPA approval, water quality standards applicable to all its intrastate waters (33 U.S.C. §1313). The CWA also requires that any applicant for a federal license or permit that may result in a discharge to a water of the United States provide to the permitting agency a certification from the applicable state that the proposed discharge complies with state water quality standards (33 U .S.C. §1341). In California, state water quality standards include an antidegradation policy to protect beneficial uses and prevent further degradation of high quality waters. The Regional Water Quality Control Boards in California have developed Water Quality Control Plans (Basin Plans) listing the water quality standards and describing the water quality objectives set to provide reasonable protection of beneficial uses. Additionally, the state antidegradation policy is stated in State Water Resources Control Board Resolution 68-16 (Resolution 68-16). California's antidegradation policy complies with the federal antidegradation policy and the requirements set forth in federal regulations. The state antidegradation policy embodied in Resolution 68-16 complies with the federal regulatory requirements and applies to the discharge from the Buena Vista Rancheria in the same manner as water quality standards. The CWA requires the NPDES permit to contain effluent limitations that are necessary to meet and maintain water quality standards. In the present case, the state cannot certify that the

proposed discharge complies with state water quality standards because there has been no assessment of antidegradation in the Proposed Permit.

Before permitting a new discharge, EPA must determine if the new discharge complies with the federal antidegradation policy. The federal antidegradation policy is designed to protect existing uses and the level of water quality necessary to protect existing beneficial uses and provide protection to higher quality and outstanding national water resources. A proposed new discharge to a surface water is typically considered a trigger for theapplication of the federal anti degradation policy. The federal antidegradation policy is based on the water quality of the receiving water in relation to the water quality standards.

Waterbodies are classified as Tier I if the water quality is not significantly better than or worse than required to support beneficial uses; Tier 2 indicates that the water quality is significantly better than required to support beneficial uses; and Tier 3 indicates outstanding waterbodies of national significance. In California, only Lake Tahoe and Mono Lake are designated as Tier 3 waterbodies. The receiving water for the proposed discharge is either Tier 1 or Tier 2; however, the lack of receiving water data precludes the federal anti degradation analysis.

Before permitting a new discharge, EPA must determine if the new discharge complies with the state anti degradation policy as well as the federal anti degradation policy. Resolution 68-16 requires that where the existing water quality is better than water quality standards, the quality is to be maintained until it is demonstrated that the change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial uses, and will not result in water quality failing to meet water quality standards. Similar to the federal antidegradation policy, the state policy requires evaluation of the water quality for the receiving water. The proposed new discharge will affect the water quality of the receiving water, if only the salinity added to the water through normal domestic use. Additionally, the restaurant and ancillary services in the proposed casino project will contribute to the treatment plant influent. The industrial strength cleaning and disinfection products used in the restaurants and lounges will generate significant quantities of priority pollutants discharged to the treatment plant. Drainage from the parking garage will undoubtedly contain oil, grease, gasoline and other compounds associated with automobiles that are or contain priority pollutants. If in the future the ancillary services include dry cleaners, there may be potential for the discharge of carcinogenic compounds to the treatment plant. Without receiving water data on water quality, the state antidegradation analysis cannot be completed.

With the available information, neither the federal nor the state antidegradation analyses can be performed. EPA cannot issue the Proposed Permit until the antidegradation analyses are complete and the discharge is found to comply with the policy. The State of California cannot certify the Proposed Permit for the new discharge without an antidegradation analysis in compliance with Resolution 68-16.

RESPONSE:

According to EPA's antidegradation policy, States and Tribes are required to establish a three-tiered antidegradation program:

"Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other

uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.

Tier 2 maintains and protects "high quality" waters -- water bodies where existing conditions are better than necessary to support CWA § 101(a)(2) "fishable/swimmable" uses. Water quality can be lowered in such waters. However, State and Tribal Tier 2 programs identify procedures that must be followed and questions that must be answered before a reduction in water quality can be allowed. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

Tier 3 maintains and protects water quality in outstanding national resource waters (ONRWs). Except for certain temporary changes, water quality cannot be lowered in such waters. ONRWs generally include the highest quality waters of the United States. However, the ONRW classification also offers special protection for waters of exceptional ecological significance, i.e., those which are important, unique, or sensitive ecologically. Decisions regarding which water bodies qualify to be ONRWs are made by States and authorized Indian Tribes."

See, http://www.epa.gov/waterscience/standards/about/adeg.htm.

As discussed in the Fact Sheet and response to comments above, the permit does not allow a reduction in water quality nor cause water quality to be lowered to a level which would interfere with existing or designated uses. The WWTP will achieve a very high level of treatment. Data provided in the permit application indicates that treatment for both BOD and TSS will consistently achieve non-detect (< 5 mg/L) in the effluent and greater than 95% removal.] In comparison, EPA's national standards for secondary treatment require that WWTPs achieve average effluent levels of BOD and TSS lower than 30 mg/L, and achieve at least 85% removal rates.

As described in the Fact Sheet, EPA has evaluated whether the discharge may cause, or have the reasonable potential to cause, or contribute to an excursion of a numeric or narrative water quality criterion for individual toxicants, including an evaluation of dilution in the receiving water, existing data on toxic pollutants, type of industry, history of compliance problems and toxic impacts, and type of receiving water and designated use. In its analysis, EPA has made no allowance for dilution in the receiving water, therefore evaluating all water quality criteria as "criteria end of pipe", the most conservative method for evaluating water quality impacts for the discharge. As described in the Fact Sheet and above, the influent to the WWTP will consist of domestic wastewater generated from the casino including sewage, restaurant washwaters, and miscellaneous wastewater from guest support services. The WWTP will not serve residential connections, nor will it accept wastewater from any industrial facilities. No dry cleaners or other industrial-type operations will be located on-site. Drainage from the parking lot will not be routed to the WWTP, but instead will be routed to stormwater storage and treatment devices located below ground and directly discharged. While cleaning and disinfection products will be used in the restaurants and lounges, the products will not generate significant quantities of priority pollutants and will be treated in the WWTP. Therefore, as described in the Fact Sheet,

based on the sources of wastewater and the level of treatment to be achieved, EPA does not believe the effluent from the WWPT will contain toxic pollutants at detectable levels that will cause water quality to be lowered.

EPA has therefore concluded the permit does not allow a reduction in water quality, nor does the permit allow water quality be lowered to a level which would interfere with existing or designated uses.

Although the State's guidance document is not directly applicable to EPA as the permitting entity for this permit, EPA concludes that its assessment is consistent with the State's antidegradation policy, which states "if the Regional Board has no reason to believe that existing water quality will be reduced due to the proposed action, no antidegradation analysis is required." See California State Water Resources Control Board, Administrative Procedures Update (APU) 90-004, Antidegradation Policy Implementation for NPDES Permitting.

7v – comment- The Proposed Permit does not contain effluent limitations for salinity as measured by either total dissolved solids (TDS) or electrical conductivity (EC). Salinity issues are of high concern in the Central Valley, which borders the proposed casino location and will be affected by the discharge.

RESPONSE:

The Basin Plan does not establish numeric water quality standards for TDS or EC applicable to the receiving water and EPA has not established numeric effluent limits for those parameters in the permit.

While EPA agrees that salinity is a concern in the Central Valley, EPA does not believe the discharge will cause or contribute to an exceedance of water quality standards.

As discussed in the Fact Sheet, the RWQCB has conducted studies on the origin of dissolved solids impairments within the Central Valley. Based on an evaluation of these studies and a comparison to the relatively small volume of wastewater to be discharged from the WWPT, EPA believes it unlikely that the WWTP will be a significant contributor of dissolved solids to the Central Valley watersheds. In order to assess the salinity content in the WWTP discharge, the permit establishes monthly monitoring requirements for EC and TDS to evaluate TDS concentrations and to assess reasonable potential. See Permit, Part I.A.

7w comment – The effluent will travel for several miles in a constructed channel along the property boundary before being transferred through the reverse siphon to the unnamed tributary, where flow will continue for several miles to Jackson Creek. There will be considerable periods of the year during which these miles of channels will be composed entirely of the discharged effluent. Over these miles of travel the BOD and ammonia present in the effluent will undergo natural degradation, creating algal growth and depleting oxygen. The record contains no analysis of the potential extent of algal growth or oxygen depletion. EPA should conclude that there is reasonable potential for excessive algal growth and oxygen depletion, both of which would cause nuisance conditions in the channels requiring more stringent BOD limitations in the permit.

RESPONSE:

Part I.C of the permit establishes the following prohibition on the discharge, consistent with the Basin Plan, to prohibit any discharge that would cause adverse conditions of excess algae downstream:

> "The discharge shall not cause the following in unnamed receiving waters immediately downstream of the discharge:
> ...
> Biostimulatory substances that promote aquatic growths in concentrations that cause nuisance or adversely affect beneficial uses.
> ..."

Based on the level of treatment that will be achieved in the WWTP (BOD levels expected to be at non-detect levels, see Response above) and the low volume of effluent that will be discharged to the downstream receiving water at Jackson Creek, EPA does not believe that the discharge has the reasonable potential to cause or contribute to an impairment of algae in the receiving waters or to waters downstream of the discharge.

7x comment – Turbidity requirements for the effluent discharged to the open channel are proposed to be monitored once per week, similar to the Total Coliform Bacteria monitoring. Monitoring once per week is insufficient to assure the effluent is receiving the intended level of treatment. The turbidity of the recycled water is specified as continuous monitoring. The same continuous monitoring requirement for turbidity should be applied to the discharged effluent as to the recycled water.

RESPONSE:

EPA believes weekly monitoring requirements for turbidity are adequate to ensure consistent operation of the WWTP and are consistent with effluent requirements for other POTWs in the region, especially given the low discharge flow volumes and the high level of treatment that will be achieved by the membrane bioreactor process. EPA does not believe that requiring more frequent monitoring is necessary.

7y comment – The Proposed Permit requires collection and analysis of samples to follow a quality assurance manual to be developed by the permittee. However, there is no time frame for development or requirement to submit for review the quality assurance manual. Additionally, independent laboratories contracted to sample or analyze on behalf of the permittee are required to follow a quality assurance manual. Likewise, there is no requirement in the Proposed Permit for [?] demonstration of a completed manual.

RESPONSE:

Part III of the permit contains requirements for monitoring, sampling and analysis, and reporting to demonstrate compliance with the permit limitations. All samples taken must conform with the requirements identified in the permit, including the requirement to develop a QA/QC plan for monitoring. No monitoring may proceed without a QA/QC plan and therefore the permittee must have its plan in place prior to sampling. The QA/QC plan is required to be maintained on-site. The QA/QC plan is a common component of all NPDES permits, and EPA will review the plan and sampling techniques during WWTP inspections. EPA is not requiring that the plan be

submitted to EPA for approval. Laboratory procedures for QA/QC are required by U.S EPA and California, which operates a State certification program for laboratories. Samples must be conducted using EPA-approved methods at a certified laboratory. EPA concludes that specifying additional QA/QC permit requirements is not warranted.

7.z – comment – The Basin Plan objective for pesticides is not included in the Proposed Permit receiving water limitations (Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition, revised October 2007).

RESPONSE:

The Permit's receiving water limitations (see, Permit, Part I.C) are consistent with the permit provisions used by the Regional Board to implement the Basin Plan and to ensure that the discharge does not cause detrimental impacts in the receiving waters. See, e.g., NPDES Permit No. CA0077950 for the City of Woodlawn. The Basin Plan establishes numerous water quality objectives to protect waters throughout the Sacramento and San Joaquin River Basins however, it is not necessary for the permit to identify each of the Basin Plan objectives individually. Rather, the permit includes a provision regarding toxic pollutants (which includes pesticides), that prohibits "Toxic pollutants to be present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health."

7 z1 comment - The Proposed Permit contains a reopener clause providing relaxation of monitoring requirements of ammonia, nitrate, EC, or TDS if after 24 months of sampling these constituents do not demonstrate reasonable potential. Ammonia is a component of domestic wastewater. The Proposed Permit acknowledges the fact that ammonia is present in domestic wastewater in levels potentially toxic to aquatic organisms. As the Proposed Permit indicates, the specific treatment system to be used cannot be imposed upon the discharger. The only way to assure the required effluent water quality is through effluent limitations. Without effluent limitations for ammonia, there would be no driver that would require operation of the system to nitrify the wastewater; failure to do so would allow ammonia to be discharged at levels potentially toxic to aquatic organisms. Likewise, the nitrification process produces nitrate, and an additional treatment step of denitrification is required to convert the nitrate to nitrogen gas. Without the effluent limitations, there would be no driver to require the continued operation of the denitrification to protect downstream drinking water uses.

RESPONSE:

While EPA believes that 24 months of data would be sufficient to demonstrate whether or not a parameter has the reasonable potential to cause or contribute to an exceedance of a water quality standard, EPA agrees with the commenter that these parameters are common elements of untreated wastewater, and that continued monitoring would be appropriate. EPA has therefore removed the reopener clause to reduce monitoring for ammonia and the other parameters.

8. OFF-SITE IMPACTS OF INCREASED FLOW

8a comment - Drainage culvert under Coal Mine Rd has experienced flooding. A drainage analysis should be done to determine impacts of additional flow from POTW on potential flooding issues.

RESPONSE:

In order to assess potential downstream impacts, EPA compared existing flows in the Jackson Creek to the increase in flows that may result from the project.

First, EPA evaluated existing drainage and existing flows. The existing drainage from the project site flows generally north to a constructed channel that runs along Coal Mine Road, tributary to Jackson Creek near the town of Buena Vista. Jackson Creek is tributary to Dry Creek approximately 5 miles from the project site, and Dry Creek is tributary to the Mokelumne River. The Jackson Creek watershed encompasses approximately 60 square miles. The point at which the proposed discharge would reach Jackson Creek is approximately 1.8 miles from (west of) Lake Amador. Lake Amador is the source of water supplied by the Jackson Valley Irrigation District (JVID) to irrigation customers in the surrounding area. The flows in Jackson Creek at the project's tributary point are determined by JVID release from Lake Amador.[1]

Based on data provided by JVID, typical overflows from the Amador dam reached 2900 acre-ft/day (1460 cfs) in 2007, with typical peak overflows ranging from 500-1,000 acre-ft/day (250-500 cfs). During dam overflows, actual flows in Jackson Creek will be higher than the dam overflows due to rainfall flowing to Jackson Creek from the watershed downstream of the dam. However, EPA conservatively assumed a typical peak dam overflow of 1500 cfs for the purposes of this analysis. During summer months, flows average around 10 to 20 acre-ft/day (5-10 cfs). During the dry season, the flows in Jackson Creek are largely dependent on the dam overflows.

Second, EPA evaluated the potential flow increase as a result of the project. Increased flows during storm events that could contribute to downstream erosion/flooding would occur from the wastewater treatment plant discharge and the increased storm water runoff due to construction of impervious areas.

EPA conducted its analysis of the wastewater treatment plant flow volume before the size of casino was reduced. EPA's analysis therefore assumed that the highest projected flow from the casino would be 250,000 gallons per day, or 0.39 cfs. Due to the reduction in the casino's size, the average Phase 2 WWTP discharge flow from the casino is now projected to be 100,000 gallons per day with a weekend peak flow of approximately 160,000 gallons per day. EPA has not conducted a re-analysis based on the lower flows because the lower flow (0.25 cfs) from the smaller casino would have even less impact. The analysis used here is based on 0.39 cfs, and is therefore more conservative.

The volume of stormwater runoff during a rain event will increase due to the increase in impervious surface areas (roads, parking lots, and roof surfaces) that will replace [?] vegetated areas and reduce rainwater infiltration and evapotranspiration. The project includes a stormwater

[1] Buena Vista NPDES Engineering Report from NPDES permit application, May 2005, Hydroscience Engineers, Inc, page 11.

control structure to mitigate the effects of flow; however, EPA has not included stormwater retention in its analysis as a conservative assumption.

Peak storm runoff was estimated using the rational method described in Appendix A of the *Erosion & Sediment Control Guidelines for the Developing Areas of the Sierra 1981* (referred to hereafter as the Guidelines) acquired from Amador County Public Works. Peak storm runoff was estimated for the project site in the existing and proposed conditions for the 25-year, 24-hour event and the 100-year, 24-hour peak runoff event, obtained from the *Technical Drainage Study Update for Flying Cloud Casino at Buena Vista Rancheria* (Kimley-Horn and Associates, Inc. February, 2009).

Table 6: Runoff Volumes at Northwest Corner to Jackson Creek

	Existing (cfs)	Proposed[a] (cfs)	Change (cfs)
25-Year Storm Event	39	51	12
100-Year Storm Event	44	57	13

[a] Flow includes 0.39 cfs wastewater effluent, based on the original, larger casino project.

Therefore, a conservative projection of the combination peak wastewater treatment flow and the peak 100-year, 24-hour storm event would increase flow by 13 cfs.

During summer months, flows from the proposed project will be less than 0.39 cfs due to irrigation use of the discharge water.

Therefore, EPA has concluded that during storm events, based on several conservative assumptions, the proposed project may increase flows in Jackson Creek by up to 1% (13 cfs of 1500 cfs). During the summer, the proposed project may increase flows in Jackson Creek by less than 8% (0.39 cfs of 5 cfs). During low flows, there is virtually no potential for increased erosion of the stream banks.

8b comment. - Public does not know exact route of wastewater to Jackson Creek
RESPONSE:
The Fact Sheet states that "The effluent from the WWTP will discharge to a constructed, vegetated swale south of the parking garage and casino which will travel on-site for approximately ½ mile. At the southwest corner of the property (at Coal Mine Rd), the water will flow through a reverse siphon into a drain under Coal Mine Road to an unnamed tributary/drainage channel which flows east for several miles before entering Jackson Creek. Jackson Creek subsequently flows into Dry Creek and to the lower Mokelumne River." A map was provided in the permit application as well as at the public hearing held in Ione.

8c comment – There are effects of flows on downstream tributaries and landowners.
RESPONSE:
See response to 8a, above.

8d comment – The discharge of treated wastewater into the local drainages would be higher than assumed in the Statement of Basis because the 30% of flow dedicated to re-use will not be utilized during winter.

RESPONSE:

EPA disagrees. The flow of treated wastewater to local drainages will be lower than the permit's maximum allowable discharge limitations for flow because 30% of the treated flows will be re-used within the casino (for toilet flushing). During the summer the flow of treated wastewater to local drainages will be further reduced because, in addition to the re-use in the casino, treated wastewater will be used for exterior landscape irrigation. Accordingly, EPA expects actual discharge flows during the summer months to be lower than the volume of effluent treated in the WWTP.

8e comment– Discharge of flows could affect downstream uses on private land, including crops and grazing property. We would like more detailed information on potential irrigation restrictions imposed by the CRWQCB as a result of this discharge.

RESPONSE:

See response to 8a, above.

8f comment – There is no mention of monitoring the receiving water for potential water quality impacts.

RESPONSE:

Requirements to monitor the receiving water when water is present have been placed in the final permit. Permit, Part I.B.2 states:

> "2. The permittee shall conduct weekly receiving water quality monitoring for pH, dissolved oxygen, turbidity, total dissolved solids, and temperature at the following locations when water is present in the receiving water:
>
> M001U - Outfall 001 Upstream: *Approximately 10' upstream of location where discharge enters receiving water.*
>
> M001D - Outfall 001 Downstream: *Approximately 100' downstream of location where discharge enters receiving water.*" [Emphasis added.]

8g comment – Discharge will likely result in water present in the tributary year- round, likely to increase risk for mosquito propagation and health risks from West Nile Virus and other diseases. The discharger does not have direct access to maintain water ways located on private property necessary to minimize the impact.

RESPONSE:

Mosquito problems are generally exacerbated by stagnant water. EPA does not believe that increasing discharge flow to the existing waterbody will increase stagnant water or the mosquito population.

8h comment- the proposed wastewater discharge will significantly exacerbate existing flooding problems, as shown by enclosed pictures.

RESPONSE:

EPA recognizes that there are existing flooding problems. EPA has determined that the proposed discharge will not significantly exacerbate existing flooding. See response to 8a.

8i comment – Were there test monitoring wells done to evaluate chemicals in groundwater? This data should be shared with the community.

RESPONSE:

EPA is aware of no monitoring wells used to evaluate the groundwater chemistry. EPA did not require the applicant to install such wells.

9. CULTURAL RESOURCES – 2005 Proposal

9a comment - There is no evidence that EPA conducted a consultation on cultural resources. Section 106 process requires consultation with the agencies or officials listed in 36 CFR 800.2 and with any Indian Tribe that attaches religious and cultural significance to the property. EPA must initiate consultation with the SHPO and other affected parties.

9b comment – There is no evidence that there was consultation with the Ione Band of Miwok Indians, who submitted comment (June 22, 2005) on the DEIR that they have a direct cultural affiliation with the property.

9c comment - The statement of basis provides no information whatsoever regarding the location of a Native American cemetery and associated cultural artifacts and lacks any analysis of potentially adverse cultural recourse effects.

RESPONSE to all Cultural Resources Comments from 2005

As documented in Section X of the 2009 Fact Sheet, EPA, since the time the above comments were received, conducted a consultation under Section 106 of the National Historic Preservation Act. Response to comments regarding the consultation are addressed in Section 18, below.

10. NEPA.

Comment No evidence is provided that EPA has complied with National Environmental Policy Act of 1969 (NEPA) and the American Indian Religious Freedom Act (25 USC 1996). The lack of NEPA documentation seems to be a clear violation of federal law.

The Proposed Permit and Fact Sheet are silent as to the steps EPA is taking to comply with NEPA in issuing the Proposed Permit. Because the permit is being issued for a new discharge, it is subject to review under NEPA (40 C.F.R. § 6.101(a)). NEPA requires EPA to thoroughly examine the potential environmental effects of any new discharge to navigable waters and to inform the public of its studies and resulting concerns. As EPA is well aware, if the discharge may have a significant impact on the environment, EPA is required to prepare an EIS describing the impacts of the action and possible alternatives.

We suspect that when sufficient information about the full range of potential pollutants is disclosed, including ammonia, dissolved oxygen, nitrate, and CTR constituents, the data will demonstrate the potential for many significant impacts, each of which must be disclosed and mitigated.

NEPA should review reclaimed water reuse alternatives to direct discharge. Potential beneficial uses may include industrial use by the cogeneration facility immediately west of the project or agricultural use on other surrounding lands.

RESPONSE:
The CWA and its implementing regulations do not require EPA to prepare an environmental impact statement under the National Environmental Policy Act ("NEPA") for the issuance of a NPDES permit in this case. Section 511(c) of the CWA provides that the requirement to prepare an environmental impact statement generally is not triggered by EPA actions taken under the authority of the CWA. There are two exceptions, neither of which applies here. The first exception is for federal financial assistance for publicly owned treatment works. The second exception is for discharges of pollution by "new sources" within the meaning of CWA § 306. A new source is defined as a facility which commenced construction after the promulgation of standards of performance under § 306 of the CWA which are applicable to such source. 40 C.F.R. § 122.2. EPA has not financially assisted the construction of this facility, nor has it promulgated § 306 standards of performance for publicly owned wastewater treatment plants. Therefore, an environmental impact statement is not required in this case.

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

11- EPA JURISDICTION
11 comment – It is unclear if this discharge is being regulated by the California Regional Water Quality Control Board since the application is to US EPA.
RESPONSE:
EPA is issuing the NPDES permit to the Tribe in accordance with 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." The discharge of wastewater is on "Indian lands" for purposes of 40 C.F.R. §123.1(h), because the facility is located within an Indian reservation.

11a-comment - EPA does not have jurisdiction because the land is owned in "fee" by the tribe.
RESPONSE:
As noted above, under the CWA and its implementing regulations, EPA has jurisdiction on Indian lands to implement the NPDES program where the State has not demonstrated that it has authority to regulate or the Tribe has not been approved. 40 C.F.R. § 122.2 defines "Indian country" to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation." For purposes of determining federal jurisdiction to implement the NPDES program, EPA has treated "Indian lands," and "Indian country" as synonymous which has been upheld by federal courts and the Environmental Appeals Board. See, e.g., *In re Mille Lacs Wastewaster Treatment Facility*, 11 E.A.D. 356, 366 (EAB 2004).

While the history of the Tribe's land base has a complicated history, the original boundaries of the Buena Vista Rancheria were restored and "all land within these restored boundaries of the [Buena Vista Rancheria] is declared to be "Indian Country." (emphasis in original). *Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. Filed 1979) Stipulation and Order (Amador County) Para. 2C., at 4, May 14, 1987. The National Indian Gaming Commission has ruled that the Buena Vista Rancheria is considered "Indian lands" pursuant to 25 U.S.C 2703(4)(A). (June 30, 2005 letter to Ms. Albtz, Albietz & Samuels). Accordingly, EPA has the authority to issue the NPDES to this Facility.

11-b – comment - The wastewater treatment system does not meet the definition of a "POTW" – publicly owned treatment works.

RESPONSE:

A "publicly owned treatment works" or "POTW" is defined in 40 C.F.R . § 404.3. 40 C.F.R. §122.2. In pertinent part, 40 C.F.R . § 404.3 provides that a "POTW means a treatment works as defined by section 212 of the [CWA],which is owned by a State or a municipality (as defined by section 502(4) of the [CWA])." Section 502(4) of the CWA defines "municipality" and includes "an Indian Tribe." Accordingly, the WWTP which is owned by the Tribe is a POTW.

11 –b comment - The record indicates that the land sited for the proposed project, Buena Vista Rancheria, has never been held in trust. As such, the State has jurisdiction over the NPDES permitting, and the Central Valley Regional Water Quality Control Board should issue the permit.

RESPONSE:

As noted in response above, EPA administers the NPDES program in Indian country which includes land within the boundaries of a reservation. The proposed facility is located within the boundaries of the Buena Vista Rancheria. Therefore EPA, and not the State, has NPDES permitting authority over the permit.

12.ADJACENT PROPERTY

12-1 comment: Request that disposal be approved by those affected: the property owners who own the land, maintain the channel, and use it for farming operations.

RESPONSE:

EPA has considered all comments provided by downstream property owners in the development of the permit conditions. The NPDES permit must protect all downstream uses, include irrigation and grazing, and contains effluent limitations to ensure that downstream uses will not be adversely affected.

As described in the Fact Sheet, EPA has established effluent limitations and monitoring requirements as specified in the CWA to protect all beneficial uses of the receiving waters, which include meeting effluent limits without an allowance for dilution to protect Agricultural Supply (AGR), Municipal Supply (MUN), Water Contact Recreation (REC-1), Other Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).

12-b comment– Will the adjacent property owners be given the results of ongoing discharge water tests ? EPA should require reporting to Amador County Public Health and Environmental Health Departments.

RESPONSE:

All monitoring data will be collected monthly and submitted quarterly to EPA on Discharge Monitoring Reports (DMRs). Section 308 of the CWA addresses monitoring and reporting under the Act and, with some exceptions, Discharge Monitoring Reports are other information received by EPA under that section are publicly available. See, CWA, Section 308(b); 33 U.S.C. § 1318(b).

12-c comment – What enforcement steps are available to US EPA in the event of noncompliance?

RESPONSE:

Section 309 of the CWA addresses EPA's enforcement authority, including the authority to issue compliance orders, assess administrative penalties, and commence civil actions. See, 33 U.S.C. § 1319. EPA may also modify, revoke or terminate a permit under conditions described at 40 C.F.R. 122.62, and .64.Criminal penalties are available for negligent or knowing violations of permit conditions, knowing endangerment relating to permit conditions, or issuance of false statements or representations in connection with NPDES permits. See, 33 U.S.C. § 1319(c). Additional information regarding EPA's enforcement authorities is at: http://www.epa.gov/compliance/civil/cwa/cwaenfstatreq.html.

13. RECYCLED WATER

13a comment - Reliability features of the recycled water treatment plant as required by the California Dept of Health Services should be included as part of the proposed facility and described.

RESPONSE:

EPA believes the permit establishes conditions necessary to ensure proper operation of the WWTP. The permit establishes effluent conditions, monitoring requirements and notification requirements. EPA has reviewed the Engineering Report prepared by the Tribe as part of the NPDES permit application which details the proposed wastewater treatment system and its reliability. EPA has included requirements for proper operation and maintenance in the "Standard Federal NPDES Permit Conditions" which is attached to, and a part of, the permit.

13.b comment- The recycled water storage reservoir is proposed to double as the chlorine contact chamber. What standards are being utilized for design and what module content time is proposed ?

RESPONSE:

The water storage reservoir is not designed to double as the chlorine contact chamber. Rather, the wastewater will be disinfected by UV. See, Section III of Fact Sheet. Treated effluent destined for re-use will be sent to the storage tank. In the storage tank, a chlorine residual will be retained to prevent bacteria growth for recycled water re-use.

13.c comment The tribe has agreed to follow the reclamation criteria established by DHS for their use of reclaimed water. Has an engineering report been prepared in compliance with the requirements ?

REPSONSE:

TheTribe has submitted a Wastewater Engineering report as part of its NPDES permit application.

13.d comment – The permit only describes meeting Title 22 for irrigation water – what about interior water ?

RESPONSE:

Section VIII of the proposed Statement of Basis states that the "Rancheria will re-use wastewater for on-site irrigation and non-potable water uses such as toilet flushing". The permit contains requirements for both irrigation water and interior water. The word "interior water" was added to Permit Section II C. to be clear.

13. e comment – Additional information should be provided on the acreage of reclaimed water irrigation, volume to be irrigated, and water to be used for interior recycled waters.

RESPONSE:

The Tribe has provided the following information on water recycling demand.

Table 7: Estimated Recycled Water Demands for the Buena Vista Casino

Recycled Water Demand	Weekday (gpd)	Weekend (gpd)	Average (gpd)
Phase 1 Inside Casino[a]	20,000	40,000	20,000
Phase 2 Inside Casino[a]	40,000	60,000	40,000
Irrigation[b]	10,000	10,000	10,000

[a] Recycled water demand = 0.40*wastewater flow.

[b] Irrigation demand is anticipated to be 10,000 to 20,000 gpd for 4 acres of landscaping. The less the demand for irrigation, the more effluent is discharged to surface water; therefore, it is assumed that 10,000 gpd will be used for irrigation to be more conservative in the estimated discharge. Recycled water demands rounded to the nearest 10,000 gpd.

13 f comment – How will cross connection control be tested and monitored ?

RESPONSE:

The NPDES permit prohibits all cross connections but does not specify how testing and monitoring is to be performed to meet plumbing codes.

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[b] Irrigation demand is anticipated to be 10,000 to 20,000 gpd for 4 acres of landscaping. The less the demand for irrigation, the more effluent is discharged to surface water; therefore, it is assumed that 10,000 gpd will be used for irrigation to be more conservative in the estimated discharge. Recycled water demands rounded to the nearest 10,000 gpd.

14. SLUDGE

14.a comment - Well water in and around Ione is traditionally high in arsenic and other heavy metals that are not removed through the conventional treatment process. This fact results in high levels of these constituents in the sludge and makes landfill disposal difficult as the sludge can be classified as "toxic". Is there a contingency plan for disposal of sludge that has high levels of "toxic" materials?

RESPONSE:

Biosolds destined for a non-hazardous landfill must meet the definition of non-hazardous material through a toxicity characteristic leaching potential (TCLP) test. If the biosolids fails that test, it must be sent to a hazardous landfill facility. Part V of the permit contains EPA requirements for the discharge of biosolids, including the requirement that the permittee is responsible for assuring that all biosolids produced at its facility are used or disposed of in accordance with 40 CFR 257, 258, and 503, whether the permittee reuses or disposes of the biosolids itself or transfers them to another party for further treatment, reuse, or disposal. EPA does not expect that the levels of arsenic or other heavy metals will be at a level that will cause the biosolids to fail the TCLP test and EPA does not believe the biosolids will be considered "toxic".

Biosolids produced at wastewater treatment plants serving similar gaming facilities (i.e., Thunder Valley Casino, Cache Creek Casino Resort, and Jackson Rancheria Casino and Hotel) are generally dewatered to greater than 15% solids and disposed of in lined Class II landfills. The Buena Vista WWTP will produce a class B biosolid. Before accepting this type of biosolid, landfills will typically require a "CAM 17" analysis for metals. Biosolids from the wastewater treatment plants serving Thunder Valley Casino, Cache Creek Casino Resort, and Jackson Rancheria Casino and Hotel are accepted by Class II lined landfills. The permit establishes a variety of requirements governing the monitoring, handling and disposal of biosolids produced at the WWTP, and provisions requiring the submission of reports describing the permittee's biosolids handling practices. See, Permit, Part V. In the unlikely event that the biosolids have unacceptably high levels of metals, the permittee must comply with the permit's requirements by, e.g., disposing of its biosolids in a landfill.

15. IMPACTS TO ON-SITE WETLANDS.

15.a comment - What coordination is required with the Army Corps of Engineers, the Regional Water Quality Control Board and the US Fish and Wildlife Service regarding the 2.8 acre on-site wetland ?

RESPONSE:

The filling of wetlands requires a separate permit under CWA Section 404, issued by the Army Corps of Engineers. The NPDES permit does not authorize any activity that would involve filling in or construction in the wetland.

16. SSOs

16.a comment– The discharger should be expected to take all necessary steps to reduce SSOs including the preparation of a Sanitary Sewer System Operation, Maintenance, Overflow Prevention and Response plan.

RESPONSE:

The permit does not authorize sanitary sewer overflows (SSOs) and therefore all SSOs are prohibited. Any SSO discharge that reaches surface waters would violate the CWA and be subject to enforcement. The collection system collects only wastewater from the Casino immediately adjacent to the POTW, and therefore is not analogous to typical city-wide sewer systems. EPA believes inflow and infiltration is highly unlikely, if not impossible, to occur and that SSOs are not anticipated.

17. GROUNDWATER

17-a comment - In addition to potential impacts to surface water quality, a significant discharge such as proposed can drastically influence the vulnerable groundwater resource in the Jackson Valley area. Concern over potential groundwater impacts was a key issue raised by the public during CEQA review of the project.

Work prepared in support of the Monitoring Well Work Plan, Buena Vista Rancheria of Me-Wuk Indians, Gaming and Entertainment Facility, names Jackson Creek as a principal source of recharge for groundwater contained in the alluvium in Jackson Valley. Conversation with local well drilling contractors indicates that groundwater quality within the alluvium tends to be much better than that produced from deeper aquifers. Well construction practices in the area historically sought to produce water from this shallow aquifer since deeper water quality is typically not acceptable without substantial treatment. There is some documentation of water quality problems in the deeper aquifers in the same work plan.

RESPONSE:

As discussed in the Fact Sheet, the NPDES permit allows the discharge of treated wastewater to surface waters of the U.S. The effluent must meet all water quality standards for the protection of the beneficial uses of the receiving waters (e.g., for tributaries of the Mokelumne River) to protect human health and aquatic species. The Basin Plan lists Municipal Supply (MUN) as a beneficial use. Therefore, the permit must protect those beneficial uses of the receiving waters.

As discussed in the Fact Sheet, the permit does not account for dilution of the effluent and therefore, the permit requires that the effluent must meet all water quality standards at the end of pipe prior to discharge to surface waters. Therefore, the effluent is required to meet drinking water quality standards as defined by the MUN beneficial use, and no adverse impacts to groundwater are expected.

17-b comment - In addition to human wastes, food facility wastes, cleaning agents, pharmaceuticals, and other constituents added to the waste stream by the casino project, the groundwater source water itself contains arsenic, metals, and radiological constituents that must be removed by the on-site water treatment plant prior to domestic use. This concentrated waste stream will likely be diverted to the waste water treatment plant. It is unclear if the waste water

plant is designed to exclude these constituents from the discharge. If so, there needs to be a discussion of management of this waste stream. Both surface and groundwater monitoring should be designed to be able to detect these constituents. If the wastewater treatment plant is not designed to address these constituents, it needs to be determined how they are to be managed. Solids resulting from evaporation may be hazardous wastes and the process could be. Since energy required for evaporation may be very costly, a problematic liquid waste stream that would have to be hauled off site may be more likely. A reliable, feasible destination for that waste stream may be even more difficult to locate. The Proposed Permit should identity andanalyze this waste stream generated by the water treatment plant, and identify requirements for handling the constituents removed by the on-site water treatment plant.

RESPONSE:

EPA does not expect that the drinking water used at the casino will contain high levels of arsenic, metals, or radiological constituents that will need to be reduced prior to domestic use. EPA does not believe that the casino will be utilizing contaminated drinking water, or that any concentrated waste stream will be generated at the facility.

18 NATIONAL HISTORIC PRESERVATION ACT

18a Comments: ***Importance of site not fully taken into consideration***

(i) Commenter has objected to the construction of the casino project for over 10 years. The commenter is of Miwok ancestry which has cultural and historical ties to the Buena Vista Rancheria, and where many of the commenter's ancestors and relatives are buried. When a potential casino project was initially discussed back in 1999, the commenter expressed concerns regarding the effects to the Native American sites located on and adjacent to the proposed project site. The United States Environmental Protection Agency (EPA), Army Corp of Engineers and the State Historic Preservation Officer all have concurred that the project will have an adverse effect to historic properties eligible for the national register. The footprint of the proposed project itself will occur in an archaeologically rich area and is likely to contain artifacts that may contribute to the overall knowledge and understanding of the historic properties affected. Many Miwok people fought hard to protect this land through the years, one individual was almost beaten to death in 1923 trying to protect the land which instigated the federal government to purchase the property in 1928 for the homeless Indians in Ione.

(ii) It seems that EPA and the Army Corp of Engineers have down played the importance of the archaeological sites affected by the proposed project. The CA-AMA-411H site is not just a village site eligible for the national register, nor are the Buena Vista Peaks eligible because of the relationship of a mythical story. Both of these sites are part of the foundation of the entire northern Miwok culture and belief system and are one continuous site. The aboriginal people at the Buena Vista Rancheria village site used a cave on the southern end of the property as a place for child birthing. This cave is listed and grouped under the Buena Vista Peak site record, yet it is contiguous and directly affiliated with the CA-AMA-411H site. There are no Native American sites located in Amador, Eldorado, Calaveras, Tuolumne, Sacramento or San Joaquin counties that come close to the importance of this site, including the Indian Grinding Rock State Park located in Amador County. The Buena Vista sites are where the oral history and the

ethnographic data document the birth of the Northern Miwok people and the culture. The sites are and always have been interconnected since humans were created on the Buena Vista Peaks. The federal and state governments should not approve a project that dissects the integrity of a cultural site into three distinct areas with a 17 acre casino slapped in the middle of such a culturally rich parcel of land.

(iii) The sites affected from the casino represent a single archaeological site with several specific sites located within the larger site and are eligible under multiple criteria, which according to the NHPA regulations, the affects of properties eligible under multiple criteria cannot be mitigated. The historic Buena Vista Rancheria property is not appropriate for a casino and the affects of a casino located on the property will affect the integrity of the sites as a whole. The affects of the casino project on this property can not be reduced to an insignificant level nor can they be mitigated. This is not just this commenter's opinion, Buena Vista representatives have argued the same points trying to stop others from building a similar size casino on the same location, arguing the points in the Sacramento Bee newspaper articles and in Federal Court documents (United States Court of Appeals Ninth District, Lower Court Docket No. CIV-S-01-2255 FCD filed June 3, 2002). Pacific Legacy acknowledges the importance of not disturbing the entire Buena Vista Rancheria property as well in their report prepared for the Buena Vista Rancheria in October 2006 entitled Historical Perspective. For the Buena Vista Rancheria and Vicinity by stating on page 26: "The Buena Vista Rancheria is one of a very few pre-1840 settlements remaining in California ... The history of the Buena Vista Rancheria provides a rare opportunity to see these forces at work. Its importance far transcends its specific history."

RESPONSE:
EPA respectfully disagrees with these comments and believes as set forth below that it properly identified and took into consideration the importance and significance of the site, consistent with the requirements of the National Historic Preservation Act of 1966 (NHPA).

The Buena Vista Rancheria applied to EPA for a National Pollutant Discharge Elimination System ("NPDES") permit under Section 402 of the Clean Water Act (CWA) to operate a wastewater treatment facility as part of its proposed project. The Tribe also applied to the U.S. Army Corps of Engineers ("Corps") for a permit under Section 404 of the CWA. As provided in 36 C.F.R. § 800.2(a)(2), EPA and the Corps agreed that EPA would assume the role as lead federal agency for purposes of fulfilling EPA and the Corps' collective responsibilities under Section 106 of the NHPA.

Consequently, under Section 106 of the NHPA and its implementing regulations, EPA determined that the proposed project was an "undertaking," as defined in 36 C.F.R. § 800.16(y). Once EPA determined that there was an undertaking, it initiated consultation with appropriate parties which includes the State Historic Preservation Office (SHPO), and federally recognized tribes that might attach religious or cultural significance to historic properties that may be affected. 36 C.F.R. § 800.2(c)(2)(ii). Specifically, with respect to the latter, EPA requested consultation with and solicited information from the Ione Band of Miwok Indians, Jackson Rancheria of Me-Wuk Indians, and Shingle Springs Band of Miwok Indians. Ione Band of

Miwok Indians and the Jackson Rancheria of Me-Wuk Indians expressed interest in participating in the process, whereas Shingle Springs declined EPA's invitation to consult.

Based on a review of the plans for the proposed project, EPA determined the geographic areas which directly or indirectly might be affected by the undertaking ("Area of Potential Effect" or "APE"), and then based on a "reasonable and good faith effort," identified historic properties located within the APE. 36 C.F.R. §§ 800.4, 800.16(d). This effort included review of existing information and studies, site visits and consultation with appropriate parties which included representatives from SHPO, Corps, County of Amador, the Ione Band of Miwok Indians, the Jackson Rancheria of Me-Wuk Indians, and the Tribe. Following these consultations, EPA determined, and the SHPO concurred that the Buena Vista Peaks and CA-AMA-411/H (sometimes referred to herein as "Upüsüni Village"), two cultural resources located in the APE, are "historic properties," as defined in 36 C.F.R. § 800.16(l), and that both are eligible for the National Register of Historic Places (NRHP) under criterion A, and CA-AMA-411/H is additionally eligible under criterion D. Additionally, EPA determined and the SHPO concurred that the area located between the Buena Vista Peaks and the Upüsüni Village, where the Tribe proposes to construct its project, does not have any intact or potentially eligible cultural resources and confirmed that this central portion of the APE is not included within the recorded site areas for either the Buena Vista Peaks or Upüsüni Village. Nevertheless, EPA and the SHPO acknowledge that there exists a relationship between the Peaks and the Village. In fact, the consideration of the potential effects from the construction of the proposed project in this area formed the entire rationale and basis for EPA's determination that the project would result in adverse effects on the Buena Vista Peaks and Upüsüni Village. Specifically, EPA determined and SHPO concurred, that the cultural affiliation between the Buena Vista Peaks and Upüsüni Village, both traditional cultural properties, would be adversely affected as a result of visual and audible intrusions from the proposed project. Additionally, EPA, as part of the assessment of adverse effects process, determined that the proposed project would not substantially impair the use of either property for traditional cultural practices based on the following: (1) the proposed project does not, in itself, restrict access to either of the historic properties; (2) the proposed project would not physically damage either historic property; (3) the proposed project will not alter existing access routes to the Peaks; and (4) the project will not block visual connection between the two properties.

By letter dated April 10, 2009, the SHPO provided formal concurrence on EPA's: (1) determination that the proposed project was an undertaking; (2) efforts to identify historic properties; and (3) determination that the undertaking would have adverse effects on historic properties. Consequently, in accordance with 36 C.F.R. § 800.6(a), EPA continued its consultation with the SHPO and the other consulting parties to seek ways to avoid, minimize and mitigate the adverse effects. These mitigation measures which are discussed in detail in Response 18e below, have been memorialized in a Historic Properties Treatment Plan ("HPTP") which is an attachment to a Memorandum of Agreement ("MOA") signed by the Tribe, SHPO, Corps and EPA. Therefore, EPA believes that the significance and importance of the site have been appropriately acknowledged and addressed under the NHPA.

18b Comments: ***The National Historic Preservation Act process was rushed***

(i) Commenter believes that the US EPA has rushed this project through this process and the project documentation reflects this rush. The Historic Properties Treatment Plan still has many flaws and issues that need to be addressed, there is no current description of the proposed project, the project footprint maps in the TEIR were printed incorrectly in the topographic maps and you can't identify the exact locations on the maps. Even though all these documents were rushed, it is clearly evident that the Native American sites affected by the proposed project are extremely significant to the Northern Miwok people and the sites as a whole are rare. This project will physically disconnect the Buena Vista Peaks and the CAAMA-411H area, ruins the integrity of the cultural sites on the Buena Vista Peaks and the CA-AMA-411 H area, disrupts the physical ability to view to and fro the Buena Vista Peaks and the CA-AMA-411H area, and destroys the ability of the Miwok people to teach future generations about the foundations of the culture, beliefs, and origins of the Northern Miwok people.

(ii) Commenter has concerns about the process through which a NHPA Section 106 consultation that began as part of an application for a water discharge permit and was supposed to look at potential downstream impacts on historical and cultural resources (see EPA letter of December 18, 2008 to the SHPO) is now evaluating "visual, atmospheric, and audible" impacts from the entire proposed casino project. Whereas the April 10, 2009 letter from the SHPO to EPA dealt with an "undertaking" that consists of the issuance of a National Pollutant Discharge Elimination System ("NPDES") permit for a wastewater treatment plan, the "undertaking" examined in the Draft HPTP is defined (at page 1) as the "the Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project" and "entails the construction of a gaming facility, a multi-level parking structure, a wastewater treatment facility, signs and lighting, and other features." Draft HPTP at p. 12. The Proposed Fact Sheet notes that the EPA has "determined that the proposed project is an 'undertaking,' as defined in 36 C.F.R. § 800.16(y)[,]" but it does not define the "undertaking."

RESPONSE:
EPA disagrees with the comment that the Section 106 process was rushed. By letter dated February 17, 2007, EPA officially initiated the Section 106 process by sending a letter to the SHPO requesting concurrence on EPA's determination that the pending NPDES permit application for the proposed project constituted an "undertaking." Since that time, EPA has engaged in extensive consultation with a number of "consulting parties," as provided in 36 C.F.R. §§ 800.2-6. EPA hosted several meetings with the consulting parties, which included SHPO, Corps, interested Tribes, the County of Amador, and interested individuals.

Specifically, EPA held consultation meetings on May 1, 2007; November 20, 2008; March 12, 2009; and June 30, 2009, at the SHPO's office in Sacramento. Each meeting was attended by approximately 30 people. In preparation for meetings, EPA distributed agenda and draft materials to be discussed at the meetings and included copies of draft reports, a depiction of the draft APE, a draft Memorandum of Agreement, and a draft Historic Properties Treatment Plan. After each meeting, EPA distributed meeting notes, attendee lists, materials for comment, and documents prepared in response to comments received. Additionally, EPA organized a site visit where consulting parties were invited to walk around the proposed site and to view the exact locations of the proposed project. For the site visit, the footprint of the proposed project was staked out at each corner, helium-filled balloons were raised to outline the height of the proposed

building structures, and the Tribal consultants were available to answer questions and to provide a narrated tour of the site. Additionally, throughout the consultation process, EPA solicited, received and considered comments from the consulting parties and other interested parties.

EPA notes that these efforts are discussed in the Fact Sheet and are documented in the administrative record which includes summaries of the consultation meetings and the project site visit, copies of historical documentation exchanged with and provided by the consulting parties that were considered and relied upon in determining the area of potential effect (APE), copies of studies and other materials that document the basis for the identification of historic properties, and the assessment and resolution of adverse effects, and other materials used in developing the Memorandum of Agreement (MOA) and the Historic Properties Treatment Plan (HPTP). In short, EPA believes that it meaningfully consulted and otherwise diligently followed the Section 106 process which was concluded by the execution of an MOA by the SHPO, Corps, Tribe and EPA.

Additionally, EPA provided full and complete descriptions of the proposed project throughout the consultation. At the first meeting on May 1, 2007, consultants for the Tribe presented maps of the area, a description of the project site, the proposed project, and visual renderings of the proposed project. Similar materials regarding the project footprint areas and building heights were provided during the consultation process which included maps, visual documentation of simulated photos. As noted by a commenter, the visual renderings of the proposed project were, like all such renderings, dependent upon the viewpoint origin. In part to address this concern, EPA coordinated the site visit described above where the consulting parties physically walked the site, the boundaries of the proposed project were staked out at the actual locations, and helium-filled balloons were raised to the height of the building to provide an actual visual outline of the project.

Moreover, a Table "Comparison of TEIR Project vs. Current Project" was provided to participating parties at the March 25, 2009 site visit and also distributed in the April 14, 2009 email from EPA to participating parties. The table provided a direct comparison of gaming floor area, parking levels, and other relevant information which was used during the consultation. The revised information reflecting the lower capacity in the casino directly affected the design rates for the wastewater treatment system. Consequently, these changes were incorporated into the 2009 proposed permit and fact sheet.

Finally, a map of the entire Rancheria, which includes a depiction of the project footprint, and the locations of cultural resources was provided in the HPTP. See, Figure 1 ("Wetland /Cultural"). Additionally, Figure 2 ("Access from Coal Mine Road") in the HPTP provides a detailed map and topographic map of the road areas, cemetery, parking, and gate access. Consequently, EPA believes that information has been provided to the participating parties to fully assess the impacts of the project. *See March 25 Site Visit Meeting notes, including maps and Description of Undertaking in October 2, 2008 Letter from EPA to SHPO*;

In response to the comment that raised concerns about the nature of how the NHPA process was initiated, EPA notes that NHPA requires that federal agencies take into consideration the potential effects that their "undertakings" may have on historic properties. An undertaking is

defined in pertinent part to be "a **project** ...requiring a Federal permit." (Emphasis added.) 36 C.F.R. § 800.16(y). As explained in the Response above, the Tribe applied to EPA for a NPDES permit to operate a wastewater treatment facility as part of its proposed casino project. Accordingly, EPA determined that the proposed project was an "undertaking." Once a federal agency determines that it has an undertaking that has the potential to cause effects, certain obligations under NHPA are triggered which in this instance included an obligation to determine if the potential effects may be adverse by applying the criteria set forth in 36 C.F.R. § 800.5 which includes potential "visual, atmospheric and audible impacts" from the undertaking. Consequently, once EPA determined that the proposed casino project had the potential to cause effects on historic properties, EPA evaluated whether the project would have "visual, atmospheric and audible impacts" as part of the Section 106 process which began, as the commenter notes, "as part of an application for water discharge permit."

18c Comments: ***Concerns with efforts to identify Historic Properties and the Area of Potential Effects***

(i) One commenter noted that it believed that the entire area of the Buena Vista Rancheria is included within a larger, single site that is eligible for listing on the National Register of Historic Places as a Traditional Tribal Cultural Property and under the criteria in 36 C.F.R. Part 800 implementing Section 106 of the National Historic Preservation Act ("NHPA"). The site extends outside the Rancheria's boundaries to include the Buena Vista Peaks and a spring adjacent to the northeast end of the Rancheria which is affiliated with the Village of Upüsüni. While the commenter appreciates that the Upiisiini Village designation has been expanded to include the Buena Vista Rancheria Cemetery and the third roundhouse and Oliver residence as loci of CA-Ama-411/H, see Draft HPTP at pp. 10-11, the commenter's position remains that the entire site is eligible for listing on the National Register. The commenter therefore respectfully disagrees with the conclusion in the Draft HPTP, at pages 9-10, that only the areas encompassing the Buena Vista Peaks and CA-Ama-411/H are eligible for listing on the National Register – and that the area in the central portion of the Rancheria where the development is proposed is not. Given that a geological study "within the footprint of the proposed project" (presumably the middle area of the Buena Vista Rancheria) was still being contemplated as recently as June 2009, see Draft HPTP at p. 17, the commenter has concerns about the adequacy of the identification efforts which led to the conclusion that the middle part of the Rancheria is not eligible for inclusion on the National Register.

Commenter continues to have questions about the determination of the areas encompassed by the direct and indirect Area(s) of Potential Impact ("APE"), and about the definition of "undertaking" found in the Draft HPTP. The draft Memorandum of Agreement circulated at the March 12, 2009 meeting at the SHPO's office states that the APE has been divided into a Direct APE and Indirect APE and references an Attachment 1 depicting them, but no attachment was, to the commenter's knowledge, presented. (Nor does the commenter recall seeing or being provided with any such depiction.) It is therefore difficult for the commenter to evaluate fully the statement on page 12 of the Draft HPTP that the "the proposed undertaking will adversely affect CA-Ama-411/H (Upüsüni Village) and the Buena Vista Peaks located within the indirect APE, due to the introduction of visual, atmospheric or audible elements that may diminish the integrity of the properties significant historic features." It also makes it difficult to evaluate the claim that

"[n]o direct impacts to these or other historic properties would occur [as a result of the project]." HPTP at p. 13. The Proposed Fact Sheet, National Pollutant Discharge Elimination System (NPDES) Permit, No. CA 0049675 accompanying the August 5, 2009 Notice of Proposed Action (the "Proposed Fact Sheet") notes that the EPA "identified the geographic areas that the undertaking may directly or indirectly cause alterations in the character or use of historic properties to determine the area of potential effect (APE). EPA's determination of the scope of the APE is based on an understanding of the proposed project and an understanding of the historic properties of traditional religious and cultural importance." Proposed Fact Sheet at p. 16. However, the Proposed Fact Sheet, like the Draft MOA and Draft HPTP, does not specifically identify the APE or explain how or why (i.e., on what basis and through what process) the APE was divided into a Direct APE and Indirect APE.

RESPONSE:

As noted above in Response 18a, EPA, in consultation with SHPO, determined that the Buena Vista Peaks and CA-AMA-411/H are two cultural resources located in the APE and are "historic properties," as defined in 36 C.F.R. § 800.16(l). Both resources are eligible for the National Register of Historic Places (NRHP) under criterion A, and CA-AMA-411/H is additionally eligible under criterion D. The definition of the APE includes the whole area, from the peaks to the cemetery. Specifically, "the CA-Ama-411/H (Upüsüni Village) indirect APE encompasses all tribal land on the Buena Vista Rancheria north and south of the project of the project location (see Figures 2–4)." *See October 2, 2008 letter from EPA to SHPO.* Accordingly, the APE is depicted as the entire area from the peaks to the cemetery and includes all of the land located between these two historic properties. Moreover, the relationship of the peaks to the cemetery is specifically discussed in both the determination of the APE (10/2/08 letter EPA to SHPO) and in the archaeological inventory (10/05 and 10/06 Pacific Legacy Reports). Therefore, EPA, in consultation with SHPO, agrees with the commenter that there exists a relationship between the peaks and the cemetery as described in the Pacific Legacy Reports. In fact, the potential effects on this relationship from the construction of the proposed project formed the entire rationale and basis for EPA's determination that the project would result in adverse effects on the Buena Vista Peaks and Upüsüni Village. Specifically, EPA determined and SHPO concurred, that the cultural affiliation between the Buena Vista Peaks and Upüsüni Village, both traditional cultural properties, would be adversely affected as a result of visual and audible intrusions of the proposed project. Consequently, the HPTP sets forth the measures identified to address these adverse effects.

With respect to the concern raised about the area located between the two historic properties, EPA determined and the SHPO concurred that this area, the proposed construction area, does not have any intact or potentially eligible cultural resources and confirmed it was for this reason that this area was not included within the recorded site areas for either the Buena Vista Peaks or Upüsüni Village. Accordingly, while EPA agrees that much of the reservation land forms a traditional cultural property, there are no physical or direct effects from the undertaking on historic properties in the proposed construction area since there are no intact or potentially eligible cultural resources in that area. Additionally, EPA, as part of the assessment of adverse effects process, determined that the proposed project would not substantially impair the use of either historic property for traditional cultural practices based on the following: (1) the proposed project does not, in itself, restrict access to either of the two historic properties; (2) the proposed

project would not physically damage either historic property; (3) the proposed project will not alter existing access routes to the Peaks; and (4) the project will not block visual connection between the two properties.

Additionally, EPA disagrees that it failed to adequately identify the area of potential effect ("APE"). Consistent with the provisions of 36 C.F.R. § 800.4, EPA identified "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties" in determining the APE. Specifically, the direct APE was identified by determining the geographic areas where the undertaking may directly affect historic properties and consisted of the construction and operational footprint of the facility, as well as potential improvements at two road intersections; and the indirect APE was identified by determining where the undertaking may indirectly cause alterations in the character or use of historic properties based on the traditional cultural properties that were documented through identification efforts.

As a result of these evaluations, EPA determined that the undertaking will result in visual intrusions and will introduce auditory elements that might affect the character or use of historic and cultural properties in the following two separate areas:

1) The Buena Vista Peaks indirect APE extends southwest from the project location to include the majority of the Buena Vista Peaks which are not located on the Rancheria (see Figures 2–4) but that are visible from the Rancheria. The indirect APE takes into account and encompasses the physical location of cultural significance of the North and South Peaks, extended from the area directly adjacent to the Rancheria up to the Peaks.

2) The CA-Ama-411/H (Upüsüni Village) indirect APE encompasses all tribal land on the Buena Vista Rancheria north and south of the project of the project location (see Figures 2–4). The indirect APE takes into account the physical location of historic and cultural properties that have been identified through the identification efforts, and includes the cemetery, evidence of three roundhouses, midden, and historic and prehistoric artifacts. *See October 2, 2008 letter from EPA to SHPO* and November 20, 2008 Meeting Notes;

18d Comment: ***EPA failed to consider off-site impacts and downstream impacts.***

If a Section 106 consultation is to include an examination of all of the impacts caused by the proposed casino and related infrastructure on the Buena Vista Rancheria, it should at the very least examine the proposed project's potential impacts to cultural sites outside of the Rancheria (in addition to the Buena Vista peaks). As stated in previous correspondence, the commenter is concerned that construction of the proposed project could result in the widening of roads that would impact cultural sites at Jackson Valley Road and Martell Land and at Highway 88 and Buena Vista Road. The Draft HPTP, at page 12, mentions auditory impacts from increased traffic, but it does not address the potential impact of increased traffic to cultural sites located outside the Rancheria boundaries.

RESPONSE:

During the consultation, EPA evaluated both the potential impacts to off-site properties that might occur from potential road widening activities and from proposed discharges from the wastewater treatment facility. EPA determined and SHPO concurred that there are no historic properties that would be impacted by potential road widening or by discharges from the wastewater treatment facility. *See December 18, 2008 Letter from EPA to SHPO and attachment: December 10, 2008 Flow Calculations for Jackson Creek and the Proposed Project; and April 10, 2009 letter from SHPO to EPA.*

18e Comments: ***Concerns with the Adequacy of Mitigation in Historic Properties Treatment Plan and the Memorandum of Agreement***

(i) Commenter believes that the Historic Properties Treatment Plan still has many flaws and issues that need to be addressed, there is no current description of the proposed project, the project footprint maps in the TEIR were printed incorrectly in the topographic maps and you can't identify the exact locations on the maps. Even though all these documents were rushed, it is clearly evident that the Native American sites affected by the proposed project are extremely significant to the Northern Miwok people and the sites as a whole are rare. This project will physically disconnect the Buena Vista Peaks and the CA-AMA-411H area, ruins the integrity of the cultural sites on the Buena Vista Peaks and the CA-AMA-411 H area, disrupts the physical ability to view to and fro the Buena Vista Peaks and the CA-AMA-411H area, and destroys the ability of the Miwok people to teach future generations about the foundations of the culture, beliefs, and origins of the Northern Miwok people. Commenter respectfully requests that you deny a permit for a casino project on this property due to the effects on the Native American sites.

(ii) Commenter believes that no casino should be built on the site, and that no water discharge or wetlands fill permit should be issued for a casino there, because building the proposed casino, parking garage, and infrastructure would cause irreparable damage to the integrity of the site. The proposed project would not only have negative auditory and visual impacts on the site; it would cause a physical separation between the Buena Vista Peaks and the other areas of the site. If the proposed casino and related infrastructure is built, there is no appropriate way to mitigate its impacts on the integrity of the site. The proposed project would not just "diminish" or "degrade" the integrity of the site or cause a "departure from the historic layout of Upiisiini and its visual connection with the peaks .... [,]" as the Draft HPTP suggests (at pages 12 and 13). It would destroy the site's integrity. The commenter also doubts whether, given the small size and narrow shape of the Rancheria, impacts from construction could be limited to the area designated as CA-Ama-411/H, despite the Draft HPTP's claim that "[project construction personnel, vehicles and equipment shall be barred from entering within the known boundaries of CA-Ama-411/H ...." Draft HPTP at p. 16.

(iii) Commenter notes that the Proposed Fact Sheet provides that "[i]n addition to the direct APE, EPA determined that the undertaking may indirectly cause alterations in the character or use of historic properties (indirect APE) based on the traditional cultural properties that have been documented through identification efforts. Specifically, EPA has determined that the undertaking may result in visual intrusions and may introduce auditory elements that may affect the character or use of historic and cultural properties. EPA has determined that the geographic

areas where the undertaking may indirectly affect historic properties." Id. at p. 17. Presumably, the Draft HPTP and Draft MOA will attempt to mitigate these "alterations" and/or "intrusions." The commenter, however, has concerns regarding the adequacy of mitigation and the discussion of mitigation in the Draft HPTP.

At the June 30 meeting, for example, representatives from the California Office of Historic Preservation ("SHPO") raised concerns about the adequacy of mitigation for the disruption of access between and among the various loci (or areas) of the site. They also noted that any supposed boundary lines between the different areas of the site are invisible and that impacts to the site must be analyzed on the whole. And they also called for a more thorough discussion in the Draft HPTP of the site as a Traditional Tribal Cultural Property, and a discussion of the integrity of the site (including its setting, association, and location) and how the integrity would be impacted by the proposed project. These comments from the SHPO are similar to some of the concerns expressed by the commenter in the June 29 Letter and elsewhere, but as the commenter has not seen a Draft HPTP more recent than the one it received on June 4, it is impossible for the commenter to determine whether and to what extent these concerns have been or are being addressed.

(iv) The HPTP states that the access to the Buena Vista peaks is from the west and the south, and that the access to the peaks is not from the north. This statement is incorrect. The access to the Buena Vista peaks has been from the west and south since people have cut access roads into the mountain at these points, the west road was in the early 1970's and the south road in the 1990's. Prior to the 1970's the access to the Buena Vista peaks occurred from the north side with most people parking at the Oliver house and hiking to the top of the peaks from there. This point of access was also the route people took to access the cave at the southern end of the Buena Vista Rancheria property which was used as a birthing cave as identified by Thompson & West in the History of Amador County published in 1881. The main aboriginal point of access to the Buena Vista peaks from the village site at the Buena Vista Rancheria was from the north, the other access points have been used predominately in the past 30 years. It is important and necessary to maintain a direct access connection from the CA-AMA-411H to the cave located on the southern portion of the property and the Buena Vista Peaks, due to this aboriginal way of access to and from these locales. The references EPA lists for linking Sigelizu to the second roundhouse site is not accurate. The reference EPA lists merely states that Sigelizu built a roundhouse at Buena Vista, it doesn't provide any additional information that identifies which roundhouse site is the one he built. It is from other ethnographic sources not listed that connects Sigelizu to the middle roundhouse.

(v) The planting plan and guidance does not include the archaeological protection area of CA-AMA-411H, despite a long discussion on the appropriateness and types of plants at the July consultation meeting and the statement that a planting plan would be constructed. The Tribe has already planted Valley Oak trees all along the access path to the cemetery that will block the view of the Buena Vista peaks from the cemetery and vice versa. This is the view shed that is trying to be protected, yet the Buena Vista Rancheria has already planned and put in action the plan to block this view with the Valley Oak trees. The Valley Oak trees already planted should be removed and there needs to be provisions in the historic properties treatment plan prohibiting the planting of vegetation

in the archaeological protection area in the historic properties treatment plan. Unless a specific plan is included in the historic properties treatment plan, no ground disturbing activities or activities that alter the natural landscape of the CA-AMA-411H area needs to be prohibited, including habitat restoration activities.

(vi) Commenter has specific concerns about the impacts of the proposed project - and its construction - on the cemetery and cemetery access. Although the proposed project's impacts on the cemetery are not discussed in the description section of the Draft HPTP, cemetery access is addressed in its mitigation section. The commenter is particularly concerned about this issue since representatives for the Tribe understood EPA to say at the March 12, 2009 consultation at the SHPO's office that the EPA was not going to be involved with the project for more than a few months after the issuance of a water discharge permit, and that the agency did not want to be involved with cemetery access issues or ensuring that cemetery access was not impeded. At the June 30 meeting, EPA indicated that it did not think (and representatives from the United States Army Corps of Engineers agreed) that any provisions regarding cemetery access should be in the Historic Properties Treatment Plan or Memorandum of Agreement, but the Tribe has not seen a more recent Draft HPTP or Draft MOA and does not know if and how these issues have been or are being addressed.

The Draft HPTP provides on page 14 that "[t]he [Buena Vista] Tribe shall make a good faith effort to provide reasonable access to the cemetery located on the Buena Vista Rancheria for descendants and family of interred ancestors"; that "[t]he [Buena Vista] Tribe shall identify and maintain a driveway that will provide access from Coal Mine Road leading to the Cemetery entrance ...."; that "[access to the cemetery will be made available to descendants and family of interred ancestors by contacting the [Buena Vista] Tribe during regular business hours]"; and that "[except during the Spring Grave Cleaning, the [Buena Vista] Tribe is solely responsible for the maintenance and upkeep of the entire cemetery." The Draft HPTP also discusses "enhancement" of the cemetery. Draft HPTP at p. 15.

RESPONSE:

Comments (i), (ii), and (iii):

Commenters have raised questions with respect to the adequacy of the mitigation measures to minimize adverse effects on CA-AMA-411H and the Buena Vista Peaks. Once potential adverse effects on historic properties are identified, the regulations provide that the federal agency and consulting parties develop and evaluate alternatives and modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects. In part to address these anticipated adverse effects, the Tribe made a number of changes to the project design before the MOA and HPTP were developed. These design changes included shifting the location of the proposed casino southward to avoid direct impacts to portions of the Upüsüni Village site, changing the size of the casino and changing the size and location of the parking structure. Specifically, the casino's capacity was downsized from 71,525 square feet to 25,332 square feet, and the parking structure was changed to a multi-level structure at the south side of the casino building from a much larger surface parking area located within the boundaries of CA-AMA-411H. Additionally, the parking structure and casino design plans were further modified to reduce indirect impacts on both CA-AMA-411H and the Buena Vista Peaks, by reducing the parking structure from 9-levels to 6-levels, and by reducing the height of the planned casino by 21 feet.

In addition to these design changes, EPA consulted with SHPO and the other consulting parties in developing a draft MOA which requires the development of a HPTP. Specifically, the HPTP includes a number of measures to minimize direct impacts to historic properties, including an "Archaeological Testing Program," and "Archaeological Discovery Plan," (specifically, the Upüsüni village complex) to the extent feasible within the context of the project. Additionally, the HPTP sets forth design measures controlling how the project will be operated to reduce the visual impacts associated with the introduction of the facilities. These design measures include requiring the use of minimum lighting standards such as the use of low wattage lights placed at the lowest allowable height, including those used for signage; use of an earth tone color scheme for the buildings; and the use of visual barriers, and landscaping.

Comments (iv), and (vi):
As the commenter points out, future access to the cemetery is addressed in the HPTP. Specifically the Tribe will be required to build and maintain a driveway that provides access from Coal Mine Road to the entrance of the cemetery. While the project will not diminish access to the cemetery, this measure was included as a mitigation to ensure that a viable access to the cemetery is included in the design project and that a driveway was not eliminated.

During the consultation process, commenters proposed that the MOA set forth specific requirements of how permission for access to the cemetery would be granted and otherwise made available by the Tribe. Based on information provided and discussions held at a number of consultation meetings, EPA understands that access to the cemetery has been an issue of contention for several years amongst some of the commenters and the Tribe. To address this issue, the commenters proposed that the MOA address how requests for cemetery access from the commenters would be addressed, with the stated intent and desire that EPA and/or the Corps would act as overseers, and if needed, enforcers of the agreement. As explained at these meetings, EPA believes for a couple of reasons that it would be inappropriate to include such an agreement as part of the Section 106 process. First, the purpose of the MOA is to set forth how adverse effects on historic properties which are caused by an undertaking will be resolved and not to address pre-existing issues such as the ongoing dispute amongst some of the commenters and the Tribe. As addressed above, creating alternate physical access to the cemetery necessitated by the implementation of the undertaking will be addressed by improving an access road and building a new driveway. However, addressing longstanding disagreements amongst the commenters that relate to future access to the cemetery that are not caused by the undertaking is beyond the scope of the Section 106 process. Additionally, responsibility under the NHPA is limited to ensuring that adverse effects caused by an undertaking are resolved and that the terms of such resolution are memorialized in a MOA. Once those adverse effects are resolved, EPA's responsibilities under Section 106 are met. The commenters seek a mechanism to address possible future disputes amongst themselves and with the Tribe for a period time that would exceed the time it will take for EPA to fulfill its Section 106 responsibilities. Therefore, as explained during the consultation meetings EPA does not believe that it would be appropriate for it to be a party to an agreement to address issues that do not address adverse effects from its undertaking and is of unlimited duration.

Comment (v):
A draft landscape plan was prepared and shared with participating parties. The planting plan is designed to mitigate visual impacts of the project, and does not address any issues of existing vegetation on-site. After considering comments received on the draft plan, a final landscape plan was developed and is incorporated into the HPTP. Specifically, native vegetation including trees and shrubs will be planted in the area between the CA-Ama-411/H and the project and along the north and east side of the project access driveway. Taller native trees will be planted between the project site and CA-Ama-411/H with the intent of obscuring views of the project facilities from the cemetery but not blocking the views of the Buena Vista Peaks from the cemetery. Additionally, native shrubs will be planted along the north and east edge of the project access driveway both to muffle automobile sounds and to obscure views of automobiles from the cemetery. Detailed information on the vegetation plan, including specific plant varieties, heights, and growth schedule, are presented in the figures attached to the HPTP. With these modifications, EPA in consultation with SHPO has determined the landscape plan is consistent with the goals of the HPTP. *See March 25, 2009 Site Visit notes and Buena Vista Vegetation Plan, Planting Palette (oversized graphic) and Planting Plans (oversized maps 1 and 2) as attachments to the HPTP*;

18f Comment: ***Newly discovered sites***

The Draft HPTP claims on page 19 that "although no known historic properties would be directly impacted by construction or operation of the project it is possible that previously unknown archaeological deposits, including human remains and funerary objects, could be discovered during ground-disturbing activities." It states twice that "[despite the intensive archaeological resource field investigations that have already been performed prior to project construction, it is nonetheless possible that previously unidentified cultural resources could be discovered during the project construction process." See HPTP at pp. 20, 22.

RESPONSE:
As the commenter notes, the HPTP provides that even though archaeological resource field investigations have been performed, it is possible that previously unidentified cultural resources could be discovered. This is often the case. The NHPA regulations provide that where appropriate, Memoranda of Agreement should include provisions that address "subsequent discovery or identification of additional historic propertied affected by the undertaking." 36 C.F.R. § 800.6 (c)(6). For this undertaking, the MOA and the HPTP require that a geo-archaeological study be conducted within the footprint area of the proposed project. Specifically, the HPTP requires that the Tribe develop and implement an *Archaeological Testing Program* which sets forth: (1) criteria for conducting test excavations; (2) a requirement to draft a report that maps and depicts the location of trenches where any archaeological deposits are found; and (3) how recovered archaeological materials will be handled. The Tribe will implement the *Archaeological Testing Program* before EPA will issue a notice to proceed with construction. While there are no known or even suspected archaeological remains in this area, the testing program was developed to provide an additional safeguard that will help ensure no cultural resources are damaged during construction. Additionally, the Tribe is required to

develop procedures to address the unanticipated discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. See Stipulation VII of the MOA.

18g Comment: ***Selection of Tribal Monitors***

(i) How does a monitor prove whether they have Miwok knowledge or not? How much knowledge is of Miwok culture and history enough? Who determines whether a monitor has Miwok knowledge or not and what makes the decision maker knowledgeable of Miwok culture? Despite the perception that tribes know their own history, in this case Buena Vista Rancheria doesn't know their own culture or history because the individuals representing the Buena Vista Rancheria today were never part of it. Just look at Buena Vista's logo, it is an Aztec bird from Mexico. What type of certification is required, what are valid certifications? Can I print my own? The protocol for identifying Native American monitors is not adequate.

(ii) Commenter provided earlier comments in a letter dated July 24, 2001, regarding, among other things, the selection and use of monitors for the proposed project should it go forward over the commenter's objections. The commenter hopes the suggested criteria for monitors set forth therein will be incorporated in the Historic Properties Treatment Plan.

RESPONSE:
EPA has set forth a protocol for identifying Native American monitors in the HPTP which reflects the input of the consulting parties. Specifically, this protocol provides that the monitors be Native American; shall have a certificate or certification demonstrating completion of a cultural protection and preservation training class or program; shall have knowledge of Native American cultural practices and material culture, and preference shall be given to persons with knowledge of Me-Wuk culture and history; and shall have experience monitoring construction activity for Native American cultural sites. EPA, in consultation with the SHPO, believes these requirements are consistent with established protocol for archeological monitors and appropriately addresses the concerns of the other consulting parties. See *HPTP, Monitoring Qualifications Native Americans.*

18h Comment: ***Reburial***

The reburial of all artifacts discovered should not be reburied within the archaeological protection are CA-AMA-411H. The reburial location must occur outside of this area. The excavation for reburial must be excavated using archaeological methods and shall be monitored by an archaeologist and Native American monitor, due to the archaeological sensitivity of the entire property and the potential for buried deposits to contribute to the knowledge of the historic properties. All Section 106 consulting parties with Native American affiliation shall be notified of the reburial date, time and location at least one week prior to reburial. Reburials shall be conducted by representatives of both the Buena Vista Rancheria and the Ione Band of Miwok Indians, and shall not be conducted by the Native American monitors, although the monitors may be present for the reburial if the consulting parties agree.

RESPONSE:
The HPTP provides that all archaeological material collected during archaeological testing will be reburied within the Rancheria following any analysis that may be conducted in a location adjacent to the cemetery in an area unlikely to contain buried archeological remains. Additionally, the HPTP provides that "to avoid potential further disturbance of buried archaeological remains at the selected location, excavation for re-burial will be conducted under the supervision of a qualified Native American monitor who will ensure that potentially significant archaeological remains are not disturbed during a re-burial." *See page 18 of HPTP.*

Further, in the event that Native American remains are exhumed or funerary objects, sacred objects or objects of cultural patrimony are discovered during ground disturbing activities, the HPTP establishes a plan for how such discoveries will be treated. Specifically, the Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects includes the following provisions: (1) in the event of a discovery, the Tribe is required to stop work within 100-feet of the find; (2) in the event of a discovery of human remains, immediately notify EPA, SHPO, and the Amador County Coroner/Sheriff; and (3) in the event that Native American remains are to be exhumed, follow the procedures an and protocol set forth in the plan.

Additionally, the re-burial of Native American remains shall be scheduled and conducted by the Tribe in coordination with Native Americans recognized as having lineal, familial, or cultural affiliation. Any burials, funerary objects, sacred items or objects of cultural patrimony that are removed from the site of discovery shall be re-interred within the Buena Vista Rancheria, within or adjacent to the existing fenced cemetery in an area that will not be subject to disturbance. See Page 22 of the HPTP. These stipulations ensure that all remains and funerary objects will be treated in accordance with all applicable laws and several of these provisions have been included in the HPTP as a direct result of input from commenters during the consultation process.

18i Comment: ***Formal invitation to Advisory Council on Historic Preservation***

Commenter hopes that the EPA will formally invite the Advisory Council on Historic Preservation ("ACHP") to participate in the Section 106 consultation for the proposed project. The SHPO's April 10, 2009 letter suggested that you invite the ACHP to participate in the consultation. While the Proposed Fact Sheet notes, at page 16, that the EPA contacted the ACHP, the commenter has not seen evidence of the EPA's formally communicating with the ACHP or inviting the ACHP to participate in the ongoing Section 106 consultation. And while, as noted in the Proposed Fact Sheet (at pages 17-18), the EPA requested and received the SHPO's concurrence in the EPA's determination of the APE, the EPA's determination regarding the site's eligibility (or the eligibility of particular areas of the site) for listing on the National Register of Historic Places, and the EPA's determination that the undertaking will adversely affect historic properties, the commenter notes that the EPA has not issued a formal finding of no adverse effect as required under 36 C.F.R. § 800.5(c) accompanied by the documentation required under 36 C.F.R. § 800.11(e).

RESPONSE:

In accordance with the regulations and as the commenter suggests, EPA notified the ACHP of the consultation process, invited its participation and provided supporting documentation regarding EPA's determination that the undertaking may cause adverse effects. By letter dated August 13, 2009, the ACHP declined EPA's invitation to participate but noted "if we receive a request for participation from ... affected Indian tribe, a consulting party , or other party, we may reconsider this decision." By letter dated January 8, 2010, the Ione Band of Miwok Indians sent a letter to the ACHP and among other things requested its participation in Buena Vista Section 106 consultation. By letter dated April 20, 2010, the ACHP declined the Ione Band of Miwok Indian's request to participate.

18j Comment: ***Failed to Provide Documents***

(i) During the consultation meetings that occurred in 2009, commenters kept hearing that the proposed project had changed significantly due to negotiations with Amador County. However, none of the reference documents have been revised nor has the TIER been revised to reflect these supposed changes. The Buena Vista Rancheria must update the project proposal to reflect the changes in the project proposal.

One major issue discussed during these consultation meetings was the proposed footprint and final building elevations. The Buena Vista Rancheria needs to update the proposed footprint of the project and the final building elevations in the project proposal and TEIR so that one can understand the potential affects from the project. None of this data has been provided except a claim that the parking structure has been reduced in height to a final building elevation of 423 feet. However, no elevation data was provided for the casino itself or the adjacent structures. How does the commenter know what the current project proposal entails?

(ii) The Historic Properties Treatment Plan still has many flaws and issues that need to be addressed, there is no current description of the proposed project, the project footprint maps in the TEIR were printed incorrectly in the topographic maps and you can't identify the exact locations on the maps.

RESPONSE:
EPA disagrees that it failed to provide documents to stakeholders during the consultation and comment period. A Table entitled "Comparison of TEIR Project vs. Current Project" was presented to participating parties at the March 25, 2009 site visit and also distributed in the April 14, 2009 email from EPA to participating parties. This table was prepared as part of the Tribal Environmental Impact Report prepared in accordance with the gaming compact entered into by the Tribe and the State of California. The table compares the gaming floor area, parking levels, and other relevant information of the original design plans and the current, smaller design. The revised design and smaller capacity of the casino affected design rates for the wastewater treatment system and were incorporated into the 2009 proposed permit and fact sheet. *See March 25, 2009 Site Visit notes.*

Additionally, depictions of the project footprint areas and building heights were provided throughout the consultation process. At the May 1, 2007 initiation meeting, consultants for the

Tribe presented maps of the area, a description of the project site, the proposed project, and visual renderings of the proposed project. Additionally, EPA provided all consultation parties with a hardcopy of the October 2, 2008 letter from EPA to the SHPO, which included the following attachments that describe the project and the area of potential effects:
Figure 1 . Project Vicinity
Figure 2. Area of Potential Effects, Topographic Base
Figure 3. Area of Potential Effects, Aerial Base
Figure 4. Area of Potential Effects, Detail
Figure 5. Detailed View of Direct Area of Potential Effects
Figure 6. Area of Potential Effects at State Route 88 and Buena Vista Road
Figure 7. Aerial View of APE at State Route 88 and Buena Vista Road
Figure 8. Area of Potential Effects at State Route 88 and Liberty Road
Figure 9. Aerial View of APE at State Route 88 and Liberty Road

Finally, as set forth in the Response to Comment 18b above, materials were provided throughout the consultation process which included aerial photos, maps, and visual documentation of simulated photos. Accordingly, EPA believes that the information provided has been adequate to fully assess the impacts of the project. *See March 25 Site Visit Meeting notes, including maps and Description of Undertaking in October 2, 2008 Letter from EPA to SHPO.*

18k Comment: ***Involvement of EPA in Process***

(i) EPA's position is that it does not have the authority to disapprove the NPDES permit based on effects to archaeological sites, just the quality of the discharged water. Moreover, EPA describes the Section 106 process of the National Historic Preservation Act as just a process to gather information and that the EPA does not have to do anything else so long as it followed the process. The commenter disagrees with this opinion. EPA and the Army Corp of Engineers do have the authority to disapprove the NPDES permit and 404 permit due to the adverse affects of the proposed project.

(ii) The commenter understands the EPA's position to be that the agency will not be involved in overseeing the implementation of the proposed Historic Properties Treatment Plan or the proposed Memorandum of Agreement after the NPDES permit is issued. The Tribe's concerns about the impacts to the cemetery and unanticipated discoveries are thus heightened, especially since the Draft HPTP provides at pages 21 and 23, respectively, that the EPA is to be responsible for notifying the SHPO and other interested persons about discoveries of potentially significant finds during construction or of human remains.

RESPONSE:
EPA's responsibilities under Section 106 are often likened to federal agencies' responsibilities under the National Environmental Policy Act (NEPA). Specifically, in discussing requirements under NEPA and NHPA, the United States Ninth Circuit Court of Appeals has held, "[b]oth Acts create obligations that are chiefly procedural in nature; both have the goal of generating information about the impact of federal actions on the environment; and both require that the relevant federal agency carefully consider the information produced. That is, both are designed to insure that the agency 'stop, look, and listen' before moving ahead." *San Carlos Apache*

Tribe v. United States Department of the Interior, 417 F.3d 1091, 1097 (9th Cir. 2005), quoting *Pres. Coaliton, Inc. v. Pierce*, 667 F.2d 851, 859 (9th Cir. 1982). Consistent with this characterization, EPA followed the Section 106 requirements, and among other things generated and collected information related to the impact of its undertaking, and "stopped, looked and listened" throughout the process. EPA, in consultation with the SHPO, then used this information to help develop the MOA and the HPTP.

EPA's obligations under the NHPA stem from its receipt of an application for a NPDES permit from the Tribe. As the NPDES permitting agency for this project, EPA is obligated to make a decision on the Tribe's application for a permit. See *In re Environmental Disposal Systems, Inc.* UIC Appeal Nos. 04-01 & 04-02; (EAB Sep.6, 2005). Specifically, EPA has an "affirmative duty to inquire into and consider all relevant facts" pertaining to the specific statutory and regulatory criteria established for each permit program, which in this instance is the provisions of the CWA and the implementing regulations found primarily in 40 C.F.R. Parts 122 and 124. See, *Wyatt v, United States*, 271 F.3d 1090.1098 (Fed.Cir.2001). As evidenced by its notice of a proposed permit for the facility, EPA believes that the Tribe's NPDES application meets the requirements of the CWA and its implementing regulations. Moreover, as outlined above, EPA believes that it fully complied with Section 106 requirements, as evidenced by its obtaining the SHPO's concurrence, as required by the NHPA regulations, on EPA's: (1) determination that the proposed project was an undertaking, (2) efforts to identify historic properties, and (3) determination that the undertaking would have adverse effects on historic properties. Most importantly, EPA received the SHPO's concurrence with the mitigation measures proposed for the project. Therefore, EPA believes that because the proposed permit meets applicable discharge and other requirements under the CWA and it has successfully concluded the Section 106 process, the permit to the Tribe should be issued. Finally, in response to the comment about future EPA involvement with the Project, EPA reiterates its response to comment 18e(vi) above. Specifically, EPA's responsibility under the NHPA is to ensure that adverse effects caused by its undertaking are appropriately resolved and that the terms of such resolution are memorialized in a MOA. Once those adverse effects are resolved, EPA's responsibilities under Section 106 are met. Therefore, EPA's involvement in the project will continue until the tasks under the MOA are completed.

18l Comment: ***Disputes the Tribe's To Make Decisions Affecting Sacred Sites***
The lineal descendents of the current membership of the Buena Vista Rancheria includes only the Chairwoman and her descendents. The Chairperson's lineage represents only 3 different lineages buried in the cemetery located on the Buena Vista Rancheria. There are 12 different lineages represented by the burials in the cemetery located on the Buena Vista Rancheria. My direct ancestors are from 2 of the 12 lineages, which both of my lineages are completely different from any of the lineages represented by the Tribe's Chairwoman. The Ione Band of Miwok Indians has tribal members from 11 of the 12 lineages buried in the cemetery. To allow the Tribe's Chairwoman to make the decisions regarding the protection of the sites located on the Buena Vista Rancheria property is ridiculous. The Ione Band of Miwok Indians must be given at least equal opportunity to make decisions affecting the Native American sites.

RESPONSE:

The Buena Vista Rancheria is a federally recognized tribe and as such the United States government recognizes its inherent governmental authority. Under this authority, the Tribe has the authority to make decisions regarding land use for land located within its reservation boundaries that is consistent with applicable law. Accordingly, EPA recognizes the Tribe's authority to decide to build a facility on its property consistent with applicable law, including the NHPA.