Jamul Indian Village – Hollywood Casino Wastewater Treatment Plant

NPDES Permit No. CA0084284

RESPONSE TO COMMENTS DOCUMENT

Comment A – Jamul Dulzura Community Planning Group, via email, dated April 11, 2017

Comment A.1

Regarding the draft NPDES permit for the Jamul Indian Village's Hollywood Casino Wastewater Treatment Plant (CA0084284}, the Jamul Dulzura Community Planning Group has several concerns. Initially the casino project issued a Tribal Environmental Impact Report which said that wastewater would be treated in a closed system venting nothing more than "odorless steam from the wastewater vaporizing system". Later, in 2015, a wastewater addendum was submitted telling us the vaporization system would not be used, and anything that was not used by an onsite water recycling system would be trucked out. Now we are asked to allow excess 'treated' wastewater to flow into a handy nearby creek. This has all the warning flags of a case of poor planning and bad engineering. San Diego County has already suffered the consequences of failed water treatment at an operating casino. The Campo Indian Reservation opened the Golden Acorn facility in 2001, and according to a June 26 2001, Union Tribune report, the treatment plant wasn't working properly within a few months. Partially treated wastewater was allowed to flow freely for years.

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http://legacy.sandiegouniontribune.com/news/metro/20040829-9999-1m29campo.html

Many residents in the area around the Golden Acorn casino are still unable to use ground water for drinking. In addition to potential contamination of groundwater supplies in Jamul this proposed discharge drains down to Otay Lake, a major component of the City of San Diego's fresh water supplies. Following is a list of major concerns that we feel need to be addressed prior to issuing any discharge permit.

EPA's Response A.1

EPA notes that the treatment system will discharge very highly treated wastewater. This NPDES permit requires the Hollywood Casino to meet all relevant water quality standards before discharging to the surface water, Willow Creek. Based on this requirement, the designated uses of the receiving water and all downstream receiving waters, including Otay Lake, will be protected. EPA also notes that the permittee is also required to obtain Underground Injection Control (UIC) registration from EPA, separately from this permit, before commencing to discharge to the groundwater to ensure groundwater uses are also protected.

Comment A.2

We believe this will require an LSA [Lake and Streambed Alteration] agreement under [CA] Fish and Game Code section 1602.

EPA's Response A.2

California Fish and Game Code section 1602 requires an entity to notify California Department of Fish and Wildlife (CDFW) prior to commencing any activity that may do one or more of the following:

- Substantially divert or obstruct the natural flow of any river, stream or lake;
- Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- Deposit debris, waste or other materials that could pass into any river, stream or lake.

Based on this description and the characterization of the discharge in the draft permit, EPA does not believe section 1602 would apply in this case. However, EPA notes that the applicability for section 1602 is not within the scope of this NPDES permitting action. It would be the responsibility of the facility operator to determine its obligations, if any, associated with this comment. In any case, the determination of CDFW would not impact issuance of this NPDES permit.

Comment A.3

We believe this permit must meet the requirements of the Federal Water Pollution Control Act.

EPA's Response A.3

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972.

The CWA made it unlawful to discharge any pollutant from a point source into navigable waters, unless a state and/or federal permit was obtained. EPA's National Pollutant Discharge Elimination System (NPDES) permit program controls discharges. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go to surface waters. In this case, the Hollywood Casino WWTP is required to obtain an NPDES permit, issued by EPA, before discharging to Willow Creek. The facility applied for an NPDES permit, which is designed to regulate both direct surface water discharges and potential indirect discharges

to Willow Creek through a subsurface flow route. This NPDES permit is designed to ensure the protection of Willow Creek and all downstream waters based on the CWA.

Comment A.4

The San Diego Regional Water Quality Control Board Basin Plan was updated in 2016. The permit should be revised to reflect the standards and conditions within the 2016 Basin Plan, rather than the 2012 Basin Plan, regardless of when time of permit application was submitted.

EPA's Response A.4

As there are no approved water quality standards for the Jamul tribe, EPA determined that it would be appropriate to apply the downstream applicable state water quality standards in developing appropriate permit limitations. EPA agrees that the 2016 Basin Plan is the appropriate plan for consideration in developing these permit limitations. The reference to the 2012 Basin Plan was in error.

Comment A.5

Willow Creek flows to Jamul Creek. Jamul Creek is identified on the State of California's 2014 303d List, Category 5, as impaired due to Toxicity. The permit should be revised to reflect these flows will contribute to an impaired water body and must be treated accordingly.

EPA's Response A.5

Due to the downstream impairment for toxicity and the need to ensure this discharge does not contribute to this impairment, EPA agrees with this comment and had included quarterly chronic whole effluent toxicity monitoring in the final permit.

Comment A.6

To adequately protect water quality and human health, data on pollutants discharged must occur more often than currently conditioned. Especially given the information stated in item 5 of the NPDES, 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."

EPA's Response A.6

As stated in Response A.5 above, due to the downstream impairment for toxicity and the need to ensure this discharge does not contribute to this impairment, EPA has included quarterly chronic whole effluent toxicity monitoring in the final permit. Furthermore, the final permit requires annual priority pollutant scans which will provide monitoring data on all federally listed priority pollutants (list found at 40 CFR Part 423, Appendix A). In order to maximize the usefulness of this data, EPA has also decided to require that the priority pollutant scans be conducted concurrently with the whole effluent toxicity test

during the first calendar quarter. Based on this requirement, if the whole effluent toxicity test indicates the discharge is toxic, the priority pollutant scan will provide detailed information on the potential cause of the toxicity. This monitoring will provide the data necessary to protect water quality and human health.

Comment A.7

Regarding, the statement "The permittee does not have available discharge data since this will be a new discharge" The Casino has been operational for over 6 months. Available discharge data is now available, and based on excess wastewater trucked off-site, should be used in this permit, unless the estimate of 70,000 GPD is greater than actual usage, for which the conservative estimate should then be utilized.

EPA's Response A.7

It is often necessary for NPDES permits for new facilities to be drafted with limited or no effluent data because such facilities are not authorized to discharge before obtaining NPDES authorization. From the time the Hollywood Casino WWTP became operational in 2016 until this permit becomes effective, the facility is not authorized to discharge wastewater to any surface water, nor are they required to meet any effluent limits or to conduct any effluent monitoring (other than that required in the NPDES permit application). EPA confirms that the draft permit was developed to protect water quality and human health for the life of the permit using the effluent data available at the time.

In April 2017 the facility provided EPA with limited effluent monitoring conducted from November 2016 through February 2017 on the following effluent characteristics or pollutants: flow volume, BOD, nitrate, TKN, total nitrogen, TDS, total coliform. For a discussion of how EPA reviewed and implemented this new data into the final permit, refer to Response C.4 below. Based on all data available, EPA confirms that the final permit is drafted to protect water quality and human health for the life of the permit. Furthermore, EPA will use effluent data collected based on this NPDES permit to determine reasonable potential for future permit requirements.

EPA notes that the effluent flow limit is based on the design capacity of the treatment facility to adequately treat wastewater according to the requirements of the permit. EPA confirms that this is an appropriate flow limit to allow the permittee to utilize its full treatment capacity, when necessary. However, EPA also reiterates from page 3 of the Fact Sheet that once this permit becomes effective (and UIC authorization granted), the permittee expects use of the direct discharge method to occur infrequently during the months of January and February and that no direct discharge would occur the remainder of the year, as the water would either be reused on-site or sent to the groundwater infiltration basins for subsurface disposal. Also refer to Response C.7 below, which indicates that the maximum daily flow limit in the final permit has been set at 68,000 gallons per day.

Comment A.8

Regarding: Rational for Numeric Effluent Limits and Monitoring. Fecal Coliform/ Total Coliform.
"Although the limit for total coliform required in the draft permit is analogous to Title 22 standards, EPA is not including effluent limits in the permit to demonstrate full compliance with California Title 22 disinfection standards." Effluent limits must be included in the permit to demonstrate full compliance with California Title 22 disinfection standards. Justification on the lack for this requirement is not provided.

EPA's Response A.8

California Title 22 requirements were developed and are mandated by the State of California and have no Federal or Tribal bearing. Because the discharge for the facility is onto tribal land, and is therefore being permitting by EPA, and not the state of California, Title 22 requirements do not directly apply. EPA is, however, applying limitations consistent with California Title 22 coliform standards based on professional judgement to ensure reused wastewater is protective of reuse practices and not because full compliance with the standards are otherwise required by law.

Comment A.9

In conclusion, we feel that an inadequate analysis has been completed, and would urge the EPA to require a more complete analysis utilizing up-to-date information before approval is granted. Because of the potential of contamination to the groundwater that is the sole source of water for the surrounding Jamul community residents, and the possible contamination of the City of San Diego's drinking water reservoir that is downstream from the casino site, this permit process needs to be scrutinized with utmost due diligence. The Jamul Dulzura Community Planning Group, representing the local community, therefore implores the RWQCB to take a close look at this treatment system before issuing an NPDES permit.

EPA's Response A.9

Based on Responses A.1 through A.8 above, EPA acknowledges the commenter's concern regarding the protection of drinking water resources and confirms that the permit will be fully protective of such uses. EPA also notes here that the RWQCB has no active role in issuing NPDES permits to tribes within California. As discussed below, EPA carefully considered the State of California's comments concerning this permit.

Comment B – County of San Diego, via email, dated April 17, 2017

The County of San Diego (County) has reviewed the proposed National Pollutant Discharge Elimination System (NPDES) permit for the Hollywood Casino Waste Water Treatment Plant (WWTP) for the Jamul Indian Village (JIV). The Department of Planning & Development Services (PDS) has reviewed the proposed project and offers

the following comments for your consideration.

This proposed permit establishes water quality-based numeric effluent limits based on the numeric and narrative water quality standards in the San Diego Region Basin Plan (2012) with no dilution factor since Willow Creek has no natural flows at certain times of the year. However, even the most stringent technology cannot fully treat all pollutants so there is a potential for these discharges to cause or contribute to water quality violations. For example, discharges that contain nitrogen (as nitrate) and phosphorus have the potential to create an imbalance of the natural cycling process of nutrients and can lead to problems ranging from an annoyance due to overabundance of algae and emergent vegetation to human health problems and adverse ecological effects. These can present a nuisance that can create a range of impairments including impacts to recreational uses (REC1 and REC2) and aquatic life (WARM, BIOL, WILD), therefore the permit shall comply with Regional Water Quality Control Board (RWQCB) standards.

EPA's Response B

EPA agrees with this comment and notes that the permit has been drafted to ensure compliance with San Diego Region Basin Plan water quality standards.

Comment C – California Regional Water Quality Control Board, San Diego Region, via email, dated April 17, 2017

The Jamul Indian Village (Tribe) is a federally recognized California Native American Tribe listed in the Federal Register and the Hollywood Casino WWTP is located on tribal reservation lands that lie approximately one mile south of the community of Jamul in unincorporated San Diego County. The newly constructed WWTP treats approximately 0.07 MGD of wastewater primarily from the Hollywood Casino for a population of up to 5550 persons. The WWTP is a tertiary treatment facility that treats wastewater physically, biochemically, and chemically followed by ozone and UV disinfection as well as sodium hypochlorite disinfection. The Tribe proposes to fully treat wastewater 1) for reuse on-site, 2) for discharge to two infiltration basins near the WWTP to be injected underground for groundwater recharge, and 3) for discharge directly to Willow Creek, a surface water of the United States and State. Willow Creek is a tributary ephemeral stream of Jamul Creek within the Otay River watershed and further downstream these surface water flows enter Lower Otay Lake Reservoir, a vital source of water supply for the City of San Diego. The Draft Permit notes that the discharge method requires both a NPDES permit for the Willow Creek discharge as well as a separate Underground Injection Control (UIC) authorization for the infiltration basins discharge. The San Diego Water Board understands that the proposed UIC authorization is being separately developed by USEPA, Region IX and that the Board will have an opportunity to review the proposal at a later date. Once the Draft Permit becomes effective (and the UIC authorization is granted), the San Diego Water Board understands that the Tribe will use the direct discharge to Willow Creek method of effluent disposal infrequently and only during the months of January and February. No direct

discharge to Willow Creek will occur in the remainder of the year, as the wastewater would either be reused on-site or sent to the groundwater infiltration basins for subsurface disposal.

The San Diego Water Board acknowledges that the Tribe has jurisdiction over water bodies and waste discharges within the reservation and the Tribe must ensure that such discharges do not cause or contribute to exceedances of water quality standards in downstream waters of the State. The WWTP began operation in October, 2016 and the Tribe currently does not have authorization to discharge treated effluent to Willow Creek without an NPDES permit. The San Diego Water Board understands that at present, all excess wastewater is trucked off-site to a City of San Diego disposal facility. The San Diego Water Board is appreciative of USEPA, Region IX on-going efforts to investigate and address citizen complaints regarding alleged illicit discharges to Willow Creek from various sources within the reservation including the WWTP. Some of these discharges were potentially caused by over-irrigation of treated effluent on landscapes within the vicinity of Willow Creek. The San Diego Water Board is concerned that any discharge of treated effluent from the WWTP to Willow Creek be terminated immediately until authorization for the discharge under the terms of an NPDES permit is obtained from USEPA, Region IX. If San Diego Water Board staff can assist USEPA, Region IX in in its investigation efforts on these matters please let us know. The San Diego Water Board specific comments on the Draft Permit are set forth below:

Comment C.1

The Draft Permit states in section VI.B.1 of the Fact Sheet on page 5 that the Tribe does not have approved water quality standards for waste discharges to Willow Creek. The San Diego Water Board supports the regulatory approach of the Draft Permit as stated further on page 5 that water quality standards for Jamul Creek and its tributaries as designated in the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) are applicable to the discharge. The San Diego Water Board also supports the conclusion in section VI.B.2 on Page 5 that Willow Creek may have no natural flow during certain times of the year and that therefore no allowance for dilution should be applied in the development of water quality-based effluent limitations applicable to the discharge.

EPA's Response C.1

This support has been noted for the record.

Comment C.2

USEPA, Region IX should amend the Draft Permit to fully address all water quality standards applicable to Willow Creek, a tributary of Jamul Creek in Hydrologic Unit Basin Number 910.33, as designated in the Basin Plan. Although the Draft Permit takes into account some of the applicable water quality standards (e.g. dissolved oxygen, nitrate, and pH), other water quality standards designated for Willow Creek/Jamul Creek are not clearly addressed. The missing water quality standards that must be considered include, but are not limited to, water quality objectives for biostimulatory substances (page 3-8, Chapter 3 of the Basin Plan), domestic or municipal supply (Tables 3-4, 3-5, and 3-6, Chapter 3 of the Basin Plan), phenolic compounds (page 3-30, Chapter 3 of the Basin Plan), trihalomethanes (page 3-34, Chapter 3 of

the Basin Plan), and water quality objectives contained in Table 3- 2, Chapter 3 of the Basin Plan, for hydrologic unit basin number 910.30, page 3-15. The Basin Plan can be accessed on the San Diego Water Board website at the following link:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/index.shtml

EPA's Response C.2

EPA has developed this NPDES permit in compliance with the Basin Plan using best professional judgment, considering the type of discharge and treatment processes utilized, to determine which pollutants have the reasonable potential to be present in the discharge at concentrations that may cause or contribute to a violation of water quality standards. Accordingly, many pollutants presented in the Basin Plan were not addressed specifically in the Fact Sheet as they were deemed to not be present at such concentrations in the discharge. Based on all comments received on the draft permit, EPA reviewed the Basin Plan again and reevaluated the assumptions made in the development of the draft permit and determined that additional permit limits are warranted for total dissolved solids and turbidity. Furthermore, an additional monitoring requirement for nitrogen and more frequent monitoring for whole effluent toxicity have been established in the final permit. See Responses C.4, C.6 and C.11 below for more details regarding these changes. Should future monitoring data indicate additional effluent limits may be appropriate, EPA may reopen and modify at that time.

Comment C.3

By letter dated April 13, 2016 to USEPA, Region IX, the California Department of Fish and Wildlife (CDFW) provided detailed comments on the *Wastewater Addendum Tribal Environmental Evaluation for the Jamul Indian Village Gaming Development Project* dated April 2015. As detailed in the CDFW comment letter Willow Creek exits the tribal reservation to the south and flows onto the CDFW Rancho Jamul Ecological Reserve (RJER) where it meanders approximately 0.5 miles before flowing into one of the RJER ponds. USEPA Region IX should amend the Draft Permit Fact Sheet to document how CDFW's concerns regarding potential impacts of the discharge on RJER have been addressed with respect to 1) the hydroperiod and water quality of Willow Creek; 2) fish and wildlife resources, including State Species of Special Concern; 3) ongoing wildlife research; and 4) ongoing and future state and federal wildlife project funding and grants.

EPA's Response C.3

EPA acknowledges the concerns of CDFW regarding the RJER and notes that these concerns have been addressed in Section X.A of the Fact Sheet. EPA believes the permit has been developed in compliance with the Basin Plan to adequately prevent any potential impacts to the RJER, including all species of concern and will not hinder any ongoing or future research. For reference, the relevant discussion from pages 11-12 of the Fact Sheet has been reproduced here:

"…the California Department of Fish and Wildlife (CDFW) informed EPA that, beginning in October 2014, the first steps have been taken to recolonize rare, threatened or endangered aquatic species in the Otay watershed. A small number of male and female western pond turtles were translocated from an adjacent watershed to the Jamul creek sub-basin within the RJER. A handful of additional turtles were translocated from the same donor population in 2015. As of late 2015, two of these turtles have migrated from their translocation site to nearby instream pools within Jamul creek. The CDFW is continuing to monitor this population.

Additionally, the RJER is within the historic range of both Arroyo toad and California red-legged frog. Along with western pond turtle, these species were identified as candidates for reintroduction to the Otay watershed as a primary incentive for acquisition and expansion of RJER. Potential efforts to reintroduce these species are pending completion of the last segment of the mitigation bank stream restoration project. The Arroyo toad is listed as federally endangered, and is a state designated species of special concern. California red-legged frog is listed as federally threatened, and is a state designated species of special concern.

Numerous biological resource assessments, protocol surveys, and botanical surveys were performed for this project by Natural Investigations Co. (2006; 2007; 2009; 2011; 2012), Forensic Entomology Services (2011; 2012; 2013), and Pacific Southwest Biological Services (2000a,b; 2001; 2002; 2006; 2011a,b,c,d; 2013). No federally-listed species have been detected within the project area. No designated critical habitat exists within, or adjacent to, the project area. No impacts to federally-listed species were identified for operation of the casino project (including the WWTP).

The draft permit authorizes the discharge of no more than 0.07 MGD of tertiary treated wastewater to Willow Creek. The draft permit contains limitations and provisions for monitoring conventional, toxic, and non-conventional pollutants, in compliance with Federal requirements and the California Regional Water Quality Control Plan for the San Diego Basin. Requirements are written to ensure an appropriate level of effluent quality that is protective of beneficial uses of the river, including wildlife, as well as rare, threatened, and endangered species.

In consideration all the information available, EPA has found that the discharge is not likely to adversely affect any of the listed species. EPA forwarded a copy of the draft permit and this fact sheet to USFWS for review and comment on conclusions concerning the effects of the proposed permit on listed species."

USFWS did review and comment on the draft permit, and based on that consultation and some minor adjustments to the permit (described in Section D below), they concurred with EPA's conclusion that the discharge is not likely to adversely affect any of the listed species.

Comment C.4

The Draft Permit states in section III on Page 3 of the Fact Sheet that at present, all excess wastewater is trucked off-site to a City of San Diego disposal facility. USEPA, Region IX should amend the Draft Permit to include a reasonable potential analysis (RPA) for priority toxic pollutants, utilizing monitoring data on the excess wastewater that is currently trucked off-site from the WWTP. USEPA, Region IX should also amend the Draft Permit to clarify that the RPA should be based on the applicable numeric water quality criteria for State waters in the California Toxics Rule set forth in title 40 of the Code of Federal Regulations section 131.38 (40 CFR section 131.38).

EPA's Response C.4

As stated in Response A.7 above, it is often necessary for NPDES permits for new facilities to be drafted with limited or no effluent data because such facilities are not authorized to discharge before obtaining NPDES authorization. From the time the Hollywood Casino WWTP became operational in 2016 until this permit becomes effective, the facility is not authorized to discharge wastewater to any surface water, nor are they required to meet any effluent limits or conduct any effluent monitoring. EPA confirms that the draft permit was developed to protect water quality and human health for the life of the permit using the effluent data available at the time.

However, in April 2017 the facility provided EPA with limited effluent monitoring conducted from November 2016 through February 2017 on the following effluent characteristics or pollutants: flow volume, BOD, nitrate, TKN, total nitrogen, TDS, total coliform. EPA notes that the draft permit already contained appropriate effluent limits for flow volume, BOD, nitrate, and total coliform. Upon review of the data for the remaining pollutants (i.e., TKN, total nitrogen and total dissolved solids), EPA determined the following:

(1) TKN does not require a permit limit because there is no TKN water quality criterion;
(2) total nitrogen concentrations should be monitored quarterly based on a maximum effluent concentration of 8.4 mg/l on February 3, 2017; and
(3) total dissolved solids (TDS) requires an effluent limit at the 500 mg/l water quality objective (as set forth in the Basin Plan for hydrologic unit basin number 910.30) based on a maximum effluent concentration of 963 mg/l TDS on November 18, 2016.

EPA has incorporated these changes into the final permit and confirms that the final permit is based on all available data and will protect water quality and human health. Furthermore, EPA notes that the more detailed effluent data collected based on this NPDES permit will be used to determine reasonable potential for future permit requirements.

EPA agrees with the comment that the reasonable potential analyses conducted in the development of the permit should be based on the applicable numeric water quality criteria. EPA notes that the necessary data to conduct these analyses in the future will be provided based on the annual priority pollutant scans required in the final permit. The toxicants listed as priority pollutants (See 40 CFR Part 423, Appendix A) provide equivalent monitoring for all relevant toxicants described in the California Toxics Rule referred to in the comment. This annual monitoring will provide adequate data to determine reasonable potential for these pollutants in future permit reissuances or modifications.

Comment C.5

USEPA, Region IX should amend the Draft Permit to include effluent limitations for phosphorous, nitrogen, ammonia, turbidity, trihalomethanes, and total dissolved solids based on Best Professional Judgement (BPJ). These constituents are common in effluent discharges from publicly-owned WWTPs.

EPA's Response C.5

As stated in Response C.2 above, EPA has developed this NPDES permit in compliance with the Basin Plan using best professional judgment (BPJ), considering the type of discharge and treatment processes utilized, to determine which pollutants have the reasonable potential to be present in the discharge at concentrations that may cause or contribute to a violation of water quality standards.

Accordingly, three of the six pollutants mentioned in this comment were addressed in the development of the draft permit, resulting in effluent limits for ammonia and turbidity as well as monitoring requirements for phosphorus. The remaining three pollutants (i.e., nitrogen, trihalomethanes, and total dissolved solids) were not addressed specifically in the Fact Sheet but were determined to not have reasonable potential based on data available at the time of development. As discussed in Response C.4 above, EPA has received additional data from the facility for nitrogen and total dissolved solids and, based on that data, has incorporated a monitoring requirement for total nitrogen and an effluent limit for total dissolved solids. See Response C.4. Based on BPJ, considering the type of treatment utilized and the very stringent chlorine limits applied to this discharge, EPA does not expect trihalomethanes to have the reasonable potential to cause or contribute to a downstream exceedance of water quality standards. Therefore, neither effluent limits nor monitoring for trihalomethanes are included in the final permit.

Comment C.6

The Draft Permit states in section VI.C of the Fact Sheet on pages 6 and 7 that the average weekly effluent limitation for total coliform is set at 2.2 per 100 ML based on the California Code of Regulations (CCR) Title 22 disinfected tertiary recycled water standard. San Diego Water Board NPDES permits for similar wastewater discharges to inland surface waters typically also include turbidity effluent limitations based on Title 22 that consider the wastewater

adequately filtered when the turbidity does not exceed an average operating turbidity of 2 nephelometric turbidity units (NTU) and does not exceed 5 NTU more than 5 percent of the time during any 24-hour period. USEPA, Region IX should consider amending the Draft Permit to require that the effluent not exceed 2 NTU as a daily average, 5 NTU more than 5 percent of the time during any 24-hour period and 10 NTU at any time.

EPA's Response C.6

Based on this comment, EPA has included an effluent limit for turbidity as described above in the final permit. The effluent shall not exceed 2 NTU as a daily average based on composite sampling once per week. Based on the type of treatment utilized, EPA expects the permittee will be able to comply with this limit and that there will not be significant variance in turbidity throughout the day. Hence, the less stringent limits of 5 NTU and 10 NTU are unnecessary.

Comment C.7

The Draft Permit states in section VI.C. of the Fact Sheet on page 7 that no limitation is established for the discharge flow volume and that flow rates must be monitored and reported on a weekly basis. USEPA, Region IX should amend the Draft Permit to limit the discharge flow volume to the rated design capacity of the WWTP as determined by a California licensed professional engineer, competent and proficient in the field of wastewater treatment and qualified to make the determination.

EPA's Response C.7

EPA agrees that the discharge flow volume shall be limited based on the design capacity of the WWTP. Accordingly, the *Title 22 Report for the Hollywood Casino Wastewater Treatment Plant – Final* dated March 24, 2016 (prepared by California licensed professional engineers) states that the design flow for the facility is 68,000 gallons per day. The final permit has been updated with a maximum daily effluent flow limit of 68,000 gallons per day.

Comment C.8

The Draft Permit states in section III of the Fact Sheet on page 3 that the Tribe will use the direct discharge to Willow Creek method of effluent disposal infrequently and only during the months of January and February. No direct discharge to Willow Creek will occur in the remainder of the year, as the wastewater would either be reused on-site or sent to the groundwater infiltration basins for subsurface disposal. Based on these considerations USEPA, Region IX should amend the Draft Permit to prohibit any direct discharge from the WWTP to Willow Creek except during the months of January and February.

EPA's Response C.8

EPA notes that the relevant section of the Fact Sheet simply indicates the discharge frequency which "the permittee expects" to occur. However, this is not incorporated as a

permit requirement. EPA confirms that this is an appropriate flow limit to allow the permittee to utilize its full treatment capacity year-round, while ensuring compliance with applicable water quality standards. EPA also notes that for clarity the two methods of discharge have been defined as Outfall 001 and Outfall 002. Outfall 001 addresses the surface outfall structure at this location; Outfall 002 addresses the discharge through the infiltration basins that may enter surface waters through a subsurface conduit. Both outfalls are subject to identical effluent limits and monitoring requirements.

Comment C.9

USEPA, Region IX should amend the Draft Permit to express all concentration-based effluent limitations in terms of both concentration and mass using the discretion provided in 40 CFR section 122.45(f)(2). The Draft Permit should require compliance with both limitations. This is standard practice in all San Diego Water Board NPDES Permits regulating discharges from publicly owned treatment works.

EPA's Response C.9

As referenced above, 40 CFR 122.45(f)(2) states "Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations." Furthermore, 40 CFR 122.45(f)(1) and subpart (ii) state that "All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except…[w]hen applicable standards and limitations are expressed in terms of other units of measurement."

EPA notes that the water quality standards used in the development of the draft permit were not expressed in terms of mass. Therefore, in accordance with 40 CFR 122.45(f)(1)(ii), the resulting effluent limits are also not expressed in terms of mass. Hence, 40 CFR 122.45(f)(2) does not apply as it only applies to pollutants limited in terms of mass.

However, EPA notes that the draft permit contains both concentration limits as well as a flow limit, effectively limiting the mass discharge for all relevant pollutants.

Comment C.10

USEPA, Region IX should amend the Draft Permit to require effluent monitoring for all priority pollutants, nutrients, bacterial indicators, and chronic toxicity to verify compliance with permit requirements. The San Diego Water Boards recommends at least quarterly monitoring for those constituents with effluent limitations to verify compliance with effluent limitations, and at least semi-annual monitoring for all other constituents to ensure that there is sufficient data to perform an RPA in the future.

EPA's Response C.10

As stated in Response C.11 below, EPA agrees that chronic whole effluent toxicity monitoring shall be increased to quarterly in the final permit based on the downstream impairment for toxicity. EPA also notes that all other constituents with effluent limits in the final permit are already set to be monitored at least once per quarter, including nutrients and bacterial indicators. However, EPA maintains that a priority pollutant scan once per year is sufficient to perform reasonable potential analyses in the future.

Comment C.11

USEPA, Region IX should amend the Draft Permit to indicate that downstream waters in Jamul Creek are listed as impaired for toxicity in the current Clean Water Act section 303(d) List of Impaired Waterbodies. Based on this listing USEPA, Region IX should require at least quarterly monitoring for chronic toxicity of the effluent.

EPA's Response C.11

Due to the downstream impairment for toxicity and the need to ensure this discharge does not contribute to this impairment, EPA agrees with this comment and had included quarterly chronic toxicity monitoring in the final permit.

Comment C.12

USEPA, Region IX should amend the Draft Permit to include the following requirements, or their equivalent:

a. "The Facilities shall be supervised and operated by persons possessing certificates of appropriate grade pursuant to title 23, division 3, chapter 26 of the California Code of Regulations (CCR)."

b. "Four years prior to reaching the wastewater treatment plant design capacity, the Tribe shall submit a wastewater treatment plant capacity report to USEPA, Region IX showing how flow volumes will be prevented from exceeding existing capacity or how capacity will be increased. The Tribe shall send a notification and a copy of the technical report to appropriate decision making bodies and the press. Opportunities for stakeholder participation and involvement are required during the preparation and development of the technical report."

c. "All proposed new treatment facilities and expansions of existing treatment facilities shall be completely constructed and operable prior to initiation of the discharge from the new or expanded facilities. The Tribe shall submit a certification report for each new treatment facility, expansion of an existing treatment facility, or design capacity re-rating request, prepared by the design engineer. For design capacity re-rating requests, the certification report shall be prepared by the engineer who evaluated the treatment facility capacity. The certification report shall: 1) identify the design capacity of the treatment facility, including the daily and 30-day design capacity; 2) certify the adequacy of each component of the treatment facility; 3) contain a

requirement-by-requirement analysis, based on acceptable engineering practices, of the process and physical design of the facility to ensure compliance with this Permit; and 4) contain the signature and engineering license number of the engineer preparing the certification report affixed to the report. If reasonable, the Tribe shall submit the certification report prior to beginning construction. The Tribe shall not initiate a discharge from a new or expanded treatment facility or at a daily flow rate in excess of its previously approved design capacity until: 1) the certification report is received by the USEPA, Region IX; 2) USEPA, Region IX has received written notification of completion of construction (new or expanded treatment facilities only); 3) an inspection of the facility has been made by USEPA, Region IX or their designated representatives (new or expanded treatment facilities only); and 4) USEPA, Region IX has provided the Tribe with written authorization to initiate discharge from a new or expanded treatment facility or at a daily flow rate in excess of its previously approved design capacity."

EPA's Response C.12

EPA agrees with requirements (b) and (c) above and they have been incorporated in Part III.G of the final permit. However, with respect to point (a) above, EPA notes that Federal regulations do not require the more stringent provisions contained in title 23, division 3, chapter 26 imposed by the State of California. Therefore, this requirement has not been incorporated into the final permit.

Comment C.13

USEPA, Region IX should amend the Draft Permit to explicitly state that the discharge shall not cause or contribute to violations of the receiving water limitations described in Part I.A.3. USEPA, Region IX should also amend the Draft Permit to incorporate receiving water limitations typically included in San Diego Water Board NPDES permits for similar wastewater discharges to inland surface water. Sample receiving water limitations can be reviewed at the website links provided in Comment 12 below.

EPA's Response C.13

Regarding Part I.A.3, EPA believes this is explicitly required as written in the draft permit.

Comment C.14

USEPA, Region IX should amend the Draft Permit to incorporate a monitoring program, to characterize the receiving waters and the effects of the discharge on the receiving waters. The monitoring program should be developed to answer specific questions about the characteristics of the receiving waters impacted by the discharge to ensure that the discharge is not adversely impacting beneficial uses of the receiving waters. USEPA, Region IX should consult with the San Diego Water Board in the development of the receiving water monitoring program.

EPA's Response C.14

As stated on page 5 of the Fact Sheet, the receiving water will have no natural flow during times of the year. Based on this, the critical downstream impact will occur when the receiving water is composed of 100% effluent. Therefore, the effluent monitoring set forth in the final permit, including quarterly toxicity testing, will provide all necessary information needed to characterize the downstream receiving water during critical periods of discharge. EPA notes that if the effluent is protective of downstream beneficial uses, based on compliance with the final permit, then the downstream receiving water must also be protective. Therefore, EPA has determined that downstream monitoring is unnecessary.

Comment C.15

The Draft Permit requires the Discharger to electronically submit compliance monitoring data and reports using the electronic reporting tools provided by USEPA, Region IX. Because the discharge from the Hollywood Casino WWTP will immediately affect Willow Creek, a water of the U.S. and the State, the San Diego Water Board would appreciate the opportunity to review the compliance monitoring data and reports submitted by the Tribe under the final NPDES permit.

EPA's Response C.15

EPA agrees that the San Diego Water Board should have access to the compliance monitoring data and notes that compliance monitoring data for any permittee is available to the public online at https://echo.epa.gov. The San Diego Water Board may access this data online or may also request any of these submittals from EPA at any time.

Comment C.16

The San Diego Water Board recommends that USEPA, Region IX consider using the following San Diego Water Board NPDES permits as a model for developing the terms and conditions of the Draft Permit.

a. *Order No. R9-2015-0026, NPDES No. CA0108944, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Intermittent Wet Weather Discharge to Escondido Creek, San Diego County.* This Order is available on the San Diego Water Board website at (http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2015/R9- 2015-0026.pdf)

b. *Order No. R9-2015-0002 as amended by R9-2016-0099, NPDES No CA0107492, Waste Discharge Requirements for the Padre Dam Municipal Water District, Ray Stoyer Water Recycling Facility, Discharge to Sycamore Creek, San Diego County*. This Order is available on the San Diego Water Board website at (http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2016/CA 0107492_FinalAmendedOrder.pdf

EPA's Response C.16

The Hollywood Casino NPDES permit has been modeled on other NPDES permits issued by EPA to similar dischargers in an effort to incorporate all relevant requirements in the Basin Plan. Furthermore, EPA has incorporated all appropriate changes based on public comments herein, including those above provided by the San Diego Water Board. EPA maintains that compliance with this permit will protect applicable water quality standards and further modifications to the permit based on the links above is unnecessary.

Comment C.17

The San Diego Water Board also recommends that USEPA, Region IX use the attached State Water Resources Control Board NPDES permit template for inland surface water discharges in developing the Draft Permit (see attached).

EPA's Response C.17

Refer to Response C.16 above.

Comment D – Carlsbad Fish and Wildlife Office, via email, dated April 11 & 25, 2017

In addition to the comments received above, EPA also coordinated with the Carlsbad Office of the U.S. Fish and Wildlife Service (USFWS) seeking concurrence that the discharge is not likely to adversely affect federally-listed species (as described on pages 10-12 of the Fact Sheet). Based on this interagency coordination, one change has been incorporated into the final permit in addition to those described in EPA's responses above. The USFWS noted that total residual chlorine should be sampled using "discrete" rather than "composite" sampling to allow for immediate analysis. Based on this comment, EPA has adjusted the sample type in the final permit for TRC to "discrete" to account for the timing of analysis.

As a result of this change, as well as the changes described above, the USFWS indicated via email on April 25, 2017 that they concur with EPA's determination that permit issuance is not likely to adversely affect federally-listed species.