UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION VII
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

STATEMENT OF BASIS
January 29, 2024

Permittee:	Prairie Band Potawatomi Nation (PBPN)
NPDES Permit No.	KS0093777
Facility Location:	PBPN Casino Complex Wastewater Treatment Facility f/k/a Harrah's Prairie Band Casino Complex, 12305 150th Road, Mayetta, Kansas SE¼ NW¼ Section 33, T8S, R15E, Jackson County, Kansas
Cognizant Official:	Joseph P. Rupnick, Tribal Chairman Prairie Band Potawatomi Nation 16281 Q Road Mayetta, Kansas 66509 Phone: (785) 966-2255
Facility Contact:	Virginia LeClere, Environmental Manager Prairie Band Potawatomi Nation Planning and Environmental Protection 15498 K Road Mayetta, Kansas 66509 Phone: (785) 966-8035

I. Status of Permit

This Statement of Basis supports EPA's proposed issuance of NPDES Permit No. KS0093777 to the Prairie Band Potawatomi Nation (PBPN) for the PBPN Casino Complex Wastewater Treatment Facility (the Facility) located near Mayetta in Jackson County, Kansas: Outfall 002 Latitude (LAT) = 39.313417° N, Longitude (LONG) = -95.749722° W; USGS Hydrologic Basin Code (HBC) = 10270102; Standard Industrial Code (SIC2) = 4952. An application for permit renewal dated November 28, 2023, was submitted to EPA from the Prairie Band Potawatomi Nation by Virginia LeClere, Environmental Manager.

The new permit will replace the NPDES permit issued by EPA effective March 6, 2019 with an expiration date of March 5, 2024. The March 6, 2019 permit will be effective until the new permit is issued for the Facility.

II. Background

At the present time, EPA has sole authority to issue NPDES permits under Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the wastewater treatment facility located on, and discharging to streams within the Prairie Band Potawatomi Nation (PBPN) Reservation. EPA has prepared this Statement of Basis and permit using the application dated November 28, 2023, and information from other sources, all as identified within this Statement of Basis and included in the Administrative Record.

III. Description of the Facility

The Facility is located at 12305 150th Road approximately 1.5 miles south and 2 miles west of Mayetta, Kansas. The Facility and the permitted discharge point is located within the exterior boundaries of the PBPN Reservation in the northeastern part of Kansas; see map of the PBPN Reservation in the Administrative Record.

The Facility consists of an original 3-cell lagoon system and an activated sludge mechanical treatment plant (2-train Aero-Mod system) which began operating in June 2004 that treats domestic

wastewater from the hotel including the spa facility, the casino, a convenience store/gas station, an RV park with 75 sanitary hook-up stations, and the clubhouse and maintenance shop on the Firekeeper Golf Course. The golf course clubhouse and maintenance shop each have a septic tank with pumping equipment that pump to the Nation Station (convenience store/gas station) lift station that pumps to the wastewater collection system before entering the main lift station for the mechanical treatment plant. Prior to the summer of 2011, the mechanical plant discharged to the original 3-cell lagoon system. The lagoon system has been bypassed with the construction of a direct discharge line which allows the mechanical plant to discharge directly to Big Elm Creek.

The mechanical plant has a design flow of 0.125 million gallons per day (MGD). Based on data from the discharge monitoring reports from February 2023 through September 2023, that reflects additions of hotel rooms and spa pools, the average effluent flow was 0.0758 MGD. The effluent from the mechanical plant discharges via Outfall 002 to Big Elm Creek. The discharge point for treated wastewater effluent from the Facility is located about 0.25 miles east of Lagoon Cell 3.

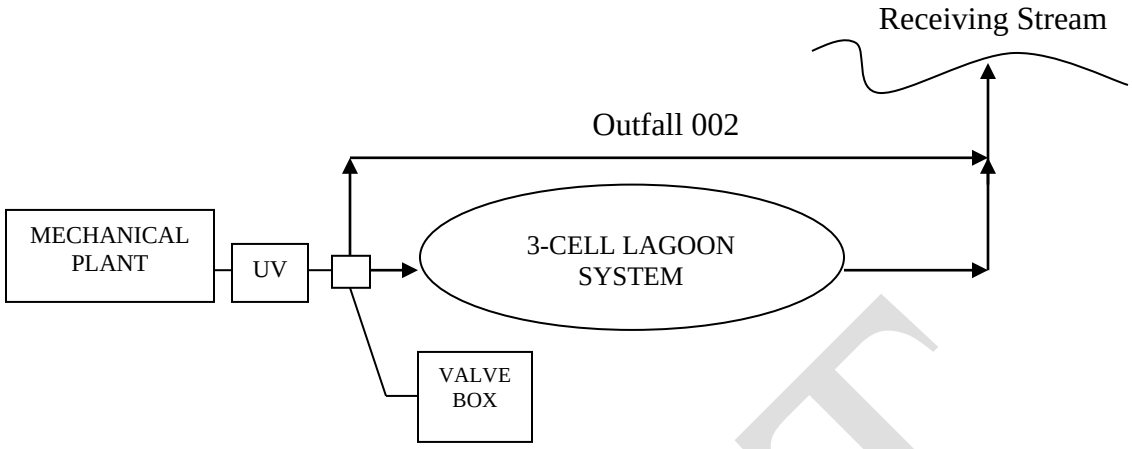
The mechanical plant has the following treatment units in order of hydraulic flow:

Main Lift station
Grit removal system (Knuckle-Rake Bar Screen replaced spiral screen in March 2021)
1 aerated "selection" tank
2 primary aeration tanks
2 secondary aeration tanks
2 clarifiers
1 ultraviolet (UV) disinfection unit
Effluent structure with 60° V-notch weir
1 aerated sludge holding tank
1 sludge filter press

Sludge from the mechanical plant, including sludge from the PBPN K Road WWTF and the PBPN Q Road WWTF (until this facility is replaced), is aerobically digested and periodically withdrawn from the sludge holding tank, put through the filter press, and then hauled off-site and composted at the Tribe's composting facility.

The lagoon system currently functions as a retention basin for diversion of peak wet weather flows and for diversion of wastewater from the mechanical plant during repairs or emergency situations. The current practice is to pump the excess wet weather and wastewater diversion flows to the mechanical plant; however, the lagoon system could according to the existing permit, also discharge through Outfall 001 to Big Elm Creek. At the time of drafting this Statement of Basis, there has been no discharge from the lagoon system during the term of the existing permit, as well as for over 20 years.

Outfall 001 is no longer authorized to discharge. The federal Clean Water Act (CWA), Section 402 prohibits wastewater discharges from "bypassing" untreated or partially treated sewage (wastewater) beyond the headworks. A bypass is defined as an intentional diversion of waste streams from any portion of a treatment facility, [40 CFR § 122.41 (m)(1)(i)]. Only under exceptional and specified limitations do the federal regulations allow for a facility to bypass some or all of the flow from its treatment process. Bypasses are prohibited by the CWA unless a Permittee can meet all of the criteria listed in 40 CFR § 122.41 (m)(4)(i)(A), (B), and (C). Any bypasses from this facility are subject to the reporting required in 40 CFR § 122.41 (m)(3)(i) and (ii).



Since the design inflow capacity of the mechanical wastewater treatment facility is less than one million gallons per day, it is considered a "minor facility". The permit designates one authorized discharge point as the Facility's outfall, which is identified as "Outfall 002". Based on the information provided by the Permittee, there are no significant industrial users discharging industrial wastewater to the Facility.

IV. Effluent Quality

While developing the permit, EPA reviewed the effluent monitoring data submitted by the Permittee from January 2019 through September 2023 to assess effluent quality and the performance of the Facility; see Tabulation of Parameters - Outfall 002 for discharge monitoring report (DMR) reported values in the Administrative Record.

The BOD_5, total suspended solids (TSS), percent removal for BOD_5 and TSS, ammonia, dissolved oxygen (DO), pH and *E. coli* bacteria for the vast majority of the reporting periods were within the limits specified in the existing permit.

V. Receiving Waters

The receiving stream for the Facility effluent is Big Elm Creek. From the discharge outfall structure, Big Elm Creek flows approximately 3.24 stream miles to Little Soldier Creek, which flows approximately 1.32 stream miles to the southern boundary of the PBPN Reservation and flows approximately an additional 16.25 stream miles to Soldier Creek which flows approximately 10.79 stream miles to the Kansas River. The discharge from the Facility outfall structure flows approximately 20.81 stream miles before entering Soldier Creek. Big Elm Creek, Segment 90; Little Soldier Creek, Segments 7 and 6; and Soldier Creek, Segments 5 and 9009, are within the Kansas - Lower Republican River Basin watershed.

EPA Region 7's 2022 Decision Document of Kansas' CWA Section 303(d) List as approved on April 29, 2022 identifies the following streams as impaired: Little Soldier Creek, Segment 6, and Soldier Creek, Segment 5, are impaired for escherichia coli (*E. coli*) and atrazine. Soldier Creek, Segment 9009 upstream of the PBPN Tribal Land, is impaired for atrazine and benthic macroinvertebrates bioassessments.

The Kansas 2022 303(d) List of All Impaired & Potentially Impaired Waters does not include any additional stream segments in addition to those listed in the previous paragraph for this portion of the watershed.

The Kansas 2022 303(d) List of Waters Formerly Listed as Impaired (Delisted) does not include any stream segments for this portion of the watershed.

The State of Kansas has designated Big Elm Creek, Segment 90, beyond the Tribal boundaries for the following uses: general purpose waters, expected aquatic life use water, and Class b secondary contact recreation.

The State of Kansas has designated Little Soldier Creek, Segment 7, downstream of the Facility for the following uses: general purpose waters, expected aquatic life use water, Class b secondary contact recreation, domestic water supply use, food procurement use, ground water recharge, industrial water supply use, irrigation use, and livestock watering use.

The State of Kansas has designated Soldier Creek, Segment 5, downstream of the Facility for the following uses: general purpose waters, expected aquatic life use water, Class B primary contact recreation, domestic water supply use, food procurement use, ground water recharge, industrial water supply use, irrigation use, and livestock watering use.

EPA Region 7's Environmental Services Division (ESD) conducted a point source stream evaluation on Big Elm Creek on February 19, 2004 (Gary Welker and Ann Jacobs memo dated March 3, 2004, in the Administrative Record). During the evaluation, a stream flow was observed, but did not appear effluent-dominated, even though the outfall from the WWTF was discharging. The maximum depth of flow was 0.08 meters, while average depth was 0.07 meters. There was no observable evidence of recreational use or fishing of the stream.

VI. Effluent Limitations

The permit contains technology-based and water quality-based permit limitations.

1. Technology-based Effluent Limitations

The mechanical wastewater treatment facility is subject to the provisions of 40 CFR Part 133 - Secondary Treatment Regulation. BOD_5, TSS, pH, and monthly average removal percentages for BOD_5 and TSS are specified in § 133.102, Secondary Treatment; see Memorandum on Secondary Treatment Requirements in NPDES Permits for POTWs developed by John Dunn revised June 14, 2023, in the Administrative Record.

The applicable technology-based effluent limitations are presented below.

Technology-based Effluent Limits - Outfall 002 Activated Sludge Treatment System			
Pollutant	**30-Day Average**	**7-Day Average**	**30-Day Average Percent Removal**
BOD_5	30 mg/L	45 mg/L	85%
TSS	30 mg/L	45 mg/L	85%
Pollutant	**Limitation**		**Sample Type**
pH	Not less than 6.0 nor greater than 9.0 Standard Units		Grab

2. Water Quality-based Effluent Limitations

Although water quality standards have not been adopted within the PBPN Tribal boundaries, EPA used its national guidance criteria and the Kansas Surface Water Quality Standards to evaluate protection of aquatic life to ensure discharges from the Facility will not cause an exceedance of those criteria in the downstream state receiving waters.

EPA relied on designated use classifications specified by Kansas Department of Health and Environment (KDHE) in downstream state receiving waters to develop waste load allocations

(WLAs) and effluent limits for the permit. The State of Kansas has designated aquatic life use as well as primary and secondary contact recreation use in various segments of downstream state receiving waters as indicated in the Kansas Surface Water Register of February 18, 2021.

The parameters of concern for water quality protection are ammonia, dissolved oxygen (DO), temperature, total dissolved solids (TDS), *E. coli* bacteria, total nitrogen, and total phosphorus. The mechanical plant is designed to provide a high level of treatment of carbonaceous waste, nitrogenous waste and bacteria. The Permittee is required to sample and test the effluent for these pollutants. The basis for testing, monitoring, and/or reporting these pollutants is discussed below.

The water quality-based effluent limits are calculated to be protective of water quality in the receiving waters within Tribal boundaries, as well as water quality standards and designated uses in downstream state receiving waters.

The applicable water quality-based limitations are presented below.

Water Quality-based Effluent Limits - Outfall 002 Activated Sludge Treatment System		
Pollutant	**Evaluation Criteria [(a)]**	**Sample Type**
Ammonia, Total as Nitrogen (March 1 - October 31)	Daily Maximum - 4.39 mg/L Monthly Average - 1.92 mg/L	24-Hour Composite
Ammonia, Total as Nitrogen (November 1 - February 28 [29])	Daily Maximum - 7.23 mg/L Monthly Average - 3.60 mg/L	24-Hour Composite
Dissolved Oxygen	Minimum - 5.0 mg/L	Grab
Temperature	Monitor and Report - ° F	Grab
Total Dissolved Solids (TDS)	Monitor and Report - mg/L	24-Hour Composite
E. Coli Bacteria [(b)] (April 1 - October 31)	Geometric Mean - 126 cfu/100 mL Single Sample Maximum - 126 cfu/100 mL	Grab
E. Coli Bacteria [(b)] (November 1 - March 31)	Geometric Mean - 3,843 cfu/100 mL Single Sample Maximum - 3,843 cfu/100 mL	Grab
Nitrogen, Total as N	Monitor and Report - mg/L	24-Hour Composite
Phosphorus, Total as P	Monitor and Report - mg/L	24-Hour Composite

Footnotes:

(a) All sample collection and analysis under the permit shall be conducted according to procedures and methods approved under 40 CFR Part 136.

(b) *E. coli* is measured in number of colony forming units per 100 mL (cfu/100 mL).

a. Ammonia

An evaluation of downstream state water quality standards, namely Kansas Surface Water Quality Standards, was conducted to ensure discharges from the Facility will not cause an exceedance of those state criteria. The immediate receiving stream is Big Elm Creek. Based on review of information available from various sources and consideration of water quality standards for Kansas, EPA believes early stages of aquatic life are likely to be present in the receiving waters to which the Facility discharges from March through

October and are likely to be absent from November through February.

EPA is proposing permit limits for the discharge from Outfall 002 to Big Elm Creek derived from WLAs that meet the EPA national guidance criteria *2013 Aquatic Life Ambient Water Quality Criteria for Ammonia - Freshwater* (EPA 822-R-18-002, April 2013) as recommendations to states and tribes authorized to establish water quality standards under the Clean Water Act (CWA), which is an update of the *1999 Update of Ambient Water Quality Criteria for Ammonia* (EPA-822-R-99-014, December 1999) and Kansas Surface Water Quality Standards to evaluate protection of aquatic life.

Early Life Stages Present criteria have been applied from March through October and Early Life Stages Absent criteria have been applied from November through February. The permit limits were derived using standard permit limit derivation methods found in the *Technical Support Document for Water Quality-based Toxics Control* (TSD), EPA 05/2-90-001, PB91-127415, March 1991. (*See,* Waste Load Allocations - Prairie Band Potawatomi Nation Casino Complex WWTF Memorandum from Gerald Memming dated December 11, 2023, in the Administrative Record).

WLAs and limits were developed for the mechanical plant to determine discharge limits for ammonia based on receiving stream flows, and background levels for ammonia, pH, and temperature data provided by KDHE from several monitoring stations downstream of the PBPN Reservation, as well as the Facility design flow of 0.125 MGD.

During the months when early aquatic life stages are expected to be present (March - October), ammonia discharges will be limited to protect the Clean Water Act Section101(a)(2) fishable/swimmable goals for aquatic life. Using permit derivation procedures, the proposed calculated limits would be 2.03 mg/l monthly average and 4.08 mg/L daily maximum.

During the months when early aquatic life stages are expected to be absent (November - February), the proposed calculated limits would be 3.60 mg/l monthly average and 7.23 mg/L daily maximum.

Results from tests on ammonia samples collected from the mechanical plant from January 2019 through September 2023 were reviewed by EPA. The reported ammonia discharge data includes maximum monthly average concentration of 2.85 mg/L and a low of less than 0.2 mg/L for March through October, and a maximum monthly average concentration of 0.27 mg/L and a low of less than 0.2 mg/L for November through February. The existing permit monthly average limits are 2.02 mg/L for March through October and 3.65 mg/L for November through February. Based on the above reported concentrations and limits in the existing permit, the mechanical plant **does** exhibit reasonable potential to exceed water quality criteria within Tribal boundaries and downstream state receiving waters**.**

The calculated permit limits for the reissued permit are more stringent than the existing permit due to an increased discharge flow rate and the use of a default CV of 0.6 for the winter season since the number of data points are less than ten and a CV of 0.8 for the summer season.

b. *Escherichia (E. coli)* Bacteria

EPA used its national guidance criteria (*2012 Recreational Water Quality Criteria, Office of Water EPA 820-F-12-058*) recommendations for protecting human health in waters designated for primary contact recreation use. EPA last issued ambient water quality criteria recommendations for recreational waters in 1986. These recommendations are intended as guidance to states, territories, and authorized Tribes in developing water quality

standards to protect swimmers from exposure to water that contains organisms that indicate the presence of fecal contamination.

An evaluation of downstream state water quality standards, namely Table 1i in the Kansas Surface Water Quality Standards, Tables of Numeric Criteria, dated March 2, 2021, was also conducted to ensure discharges from the mechanical plant will not cause an exceedance of those state criteria in downstream receiving waters. The state of Kansas has designated the recreational season from April 1 through October 31. The immediate receiving stream is Big Elm Creek which flows approximately 3.24 stream miles before entering Segment 7 of Little Soldier Creek; the flow travels approximately another 9.15 stream miles before entering Segment 6 of Little Soldier Creek.

The report from the stream evaluation conducted by EPA staff on February 19, 2004, indicated that the receiving stream did not appear effluent-dominated. There was no observable evidence of recreational use or fishing of the stream.

EPA has determined that a high level of protection for human activities during the recreational season in case of recreational uses is appropriate within Tribal boundaries and downstream state receiving waters. EPA agrees with the state of Kansas contact recreational use designations for Big Elm Creek (upstream of the PBPN Reservation), Little Soldier Creek, and Soldier Creek. See table below for KDHE's *E. coli* criteria for classified stream segments. The criteria for Soldier Creek was not considered since the stream is approximately 20.81 stream miles from the discharge point.

Stream / Segment	Contact Recreation / Class	*E. coli* Criteria Jan. 1 - Dec. 31	*E. coli* Criteria April 1 - Oct. 31	*E. coli* Criteria Nov. 1 - March 31
Big Elm Creek / 90	SCR, Class b	GM = 3843 cfu/100 mL		
Little Soldier Creek / 7	SCR, Class b	GM = 3843 cfu/100 mL		
Little Soldier Creek / 6	PCR, Class C		GM = 427 cfu/100 mL	GM = 3843 cfu/100 mL
Soldier Creek / 5	PCR, Class B		GM = 262 cfu/100 mL	GM = 2358 cfu/100 mL

Footnotes:
Stream Segment and Designated Contact Recreation Use from Kansas Surface Water Register, February 18, 2021
E. coli Criteria from Table 1i of Kansas Surface Water Quality Standards, Tables of Numeric Criteria, March 2, 2021
SCR = Secondary Contact Recreation
PCR = Primary Contact Recreation
GM = Geometric Mean

Consistent with the requirements of the Clean Water Act (the Act) and Water Quality Standards Regulation, States (Tribes) are free to develop and adopt any use classification system they see as appropriate, except that waste transport and assimilation is not an acceptable use in any case (see 40 CFR § 131.10(a)). Among the uses listed in the Act, there is no hierarchy. EPA's Water Quality Standards Regulation emphasizes the uses specified in Section 101(a)(2) of the Act. To be consistent with the 101(a)(2) interim goal of the Act, States must provide water quality for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water ("fishable/swimmable") where attainable (see 40 CFR § 131.10(j)).

The PBPN does not have Treatment as a State (TAS) status and no Use Attainability Analysis (UAA) was conducted per 40 CFR § 131.10 (g) on Big Elm Creek**,** the receiving stream. The State of Kansas has no jurisdiction to establish recreational use designations within Tribal boundaries. Therefore**,** the EPA is assigning the highest attainable use to Big Elm Creek. That use is designated as an *E. coli* effluent limitation of a geometric mean of

126 cfu/100 mL for fresh water in accordance with Table 1**.** Recommended 2012 RWQC of Section 1.2 EPA's Recommended § 304(a) Water Quality Criteria, of EPA's *2012 Recreational Water Quality Criteria*.

The Facility employes an ultraviolet (UV) disinfection system and has reported one exceedance of 495 cfu/100 mL in the month of August 2023 for the recreation season during the period of January 2019 through September 2023 that would be in violation of the proposed limit of 126 cfu/100 mL.

For the recreational season of April 1 through October 31, the limit specified in the existing permit is 427 cfu/100 mL as a geometric mean and will be replaced with 126 cfu/100 mL as a geometric mean in the permit. Since one sample will be taken monthly, the single sample maximum of 126 cfu/100 mL is included in the permit.

The non-recreational season limits are to protect Kansas water quality standards in downstream state waters beyond the Tribal boundaries. During the non-recreational season of November 1 through March 31, the limit specified in the existing permit is 3,843 cfu/100 mL as a geometric mean and will be retained in the permit. Since one sample will be taken monthly, the single sample maximum of 3,843 cfu/100 mL will be included in the permit.

The proposed permit limits for the non-recreational season shall be in accordance with the above table for primary contact recreation, Class C stream as indicated above.

These limits have been set to protect human health within Tribal boundaries and downstream state receiving waters.

c. Dissolved Oxygen

On the basis of the treatment performance for the mechanical plant, the 5.0 mg/L criterion for dissolved oxygen can be achieved. With a BOD_5 monthly average limit of 30 mg/L and the mechanical aeration process, the level of dissolved oxygen downstream of the discharge point will remain adequate to protect water quality in waters within Tribal boundaries and meet downstream state water quality standards. The effluent limitation is as stipulated in Table 1g in the Kansas Surface Water Quality Standards, Tables of Numeric Criteria, dated March 2, 2021, with a minimum limit of 5.0 mg/L for the protection of aquatic life.

d. Temperature

Monitoring for temperature is continued in the permit. Effluent monitoring for temperature is required in accordance with 40 CFR Part 122 Appendix J, Table 1A; and is to ensure protection of the surface waters for aquatic life as stipulated in Table 1g in the Kansas Surface Water Quality Standards, Tables of Numeric Criteria, dated March 2, 2021, with a maximum limit of 32° C (89.6° F) allowed for warm-water fish species outside the zone of initial dilution.

e. Total Dissolved Solids (TDS)

Monitoring for TDS is continued in the permit. Effluent monitoring for this parameter is required in accordance with 40 CFR Part 122 Appendix J, Table 1. The acquisition of this data will aid in determining if there is a reasonable potential for the mechanical plant to cause an excursion of water quality criteria for this pollutant.

f. Total Nitrogen and Total Phosphorus

High levels of nitrogen and phosphorus in rivers and streams can cause the degradation of the water bodies and harm fish, wildlife, and human health. Excessive levels of nutrients in water bodies are often the direct result of human activities. Nitrogen and phosphorus are

contributed to water bodies by both point and nonpoint sources, but the extent to which they contribute to water quality degradation varies by watershed and surrounding land uses.

Monitoring for total nitrite plus nitrate nitrogen ($NO_2 + NO_3$) and total Kjeldahl nitrogen (TKN) is included in the permit for Outfall 002. Total nitrogen concentration is the sum of the concentrations of nitrite plus nitrate nitrogen and Kjeldahl nitrogen. Effluent monitoring for these parameters is required in accordance with 40 CFR Part 122 Appendix J, Table 1.

Monitoring and reporting for total nitrogen and total phosphorus are continued in the permit to evaluate the input of the wastewater effluent loadings of these pollutants in the receiving stream.

3. Other Effluent Parameter

Another parameter of concern is Oil and Grease. The mechanical plant is designed to provide a high level of treatment of oil and grease, a carbonaceous waste. Wastewater from restaurants and other commercial food service facilities differs significantly from residential wastewater. In addition to higher surge volumes during busy periods, and generally higher temperatures, restaurant wastewater is typically higher in strength than residential wastewater. This is due to higher levels of oil, grease, and foods which cause a higher biochemical oxygen demand (BOD). Oil and grease frequently cause problems for sewer systems. The problem occurs when oil and grease liquefy at the high-water temperatures used to wash dishes and later solidify in sewer lines. The problem is exacerbated when highly efficient detergents are used to emulsify the oil and grease, keeping them in suspension until they enter the sewer line. Although conventional grease traps are supposed to prevent grease from entering the sewer line, high grease loads, emulsified grease, and surge wastewater loadings often cause grease to bypass the grease trap and enter the sewer line and eventually the treatment facility. It is important that grease traps be maintained to prevent overflows to the sewer system.

Monitoring for oil and grease is continued in the permit for Outfall 002. Effluent monitoring for this parameter is required in accordance with 40 CFR Part 122 Appendix J, Table 1.

4. Changes from Existing NPDES Permit

a. Outfall 001 (Lagoon System)

- Outfall 001 is no longer authorized to discharge

b. Outfall 002 (Mechanical Plant)

- The ammonia limitations for the mechanical plant have been revised
- *E. coli* Bacteria geometric mean for April 1 - October 31 has been revised
- *E. coli* Bacteria single sample maximum limitation has been added to each season

VII. Influent Monitoring Requirements

The requirement that the influent to the Facility be monitored for BOD_5 and TSS is to provide data to determine if the 85% treatment efficiency of the mechanical plant is being achieved. Influent monitoring for flow is required to provide data to aid engineering assessments that may need to be conducted on the Facility (e.g., inflow and infiltration studies, system upgrade studies, etc.).

VIII. Antidegradation Review

An antidegradation review was performed for purposes of developing the permit for reissuance pursuant to 40 CFR § 131.12. A Tier 1 review was completed for Big Elm Creek and in

downstream state receiving waters in accordance with 40 CFR §131.12(a)(1). On February 19, 2004, a Point Source Stream Evaluation was conducted for the receiving stream by EPA Region 7's Environmental Services Division. A steady stream flow was observed in Big Elm Creek during the evaluation. The maximum depth of flow was 0.08 meters, and the average depth was 0.07 meters. The stream flow did not appear to be effluent dominated; the outfall was discharging during the evaluation. There was no observable evidence of recreational use or fishing of the stream at the point of discharge from the Facility.

During the antidegradation review, EPA reviewed effluent monitoring data from the Facility, Kansas water quality reports, the 2022 Kansas 303(d) List of All Impaired & Potentially Impaired Waters, the EPA R7 2022 Decision Document for Kansas' Clean Water Act Section 303(d) List, and designated uses of the receiving waters for information on water quality in Tribal waters, as well as stream impairments in upstream and downstream state receiving waters. Based on the review, EPA concluded that the effluent limitations developed for the permit are protective of the Clean Water Act 101(a)(2) fishable/swimmable goals and will ensure the existing quality of water in the receiving streams is not lowered.

EPA is applying Early Life Stages Present criteria from March 1 through October 31 and Early Life Stages Absent criteria November 1 through February 28 [29]. The Facility will be required to meet a minimum dissolved oxygen (DO) concentration of 5.0 mg/L in the effluent.

IX. Self-Monitoring Requirements

The permit contains sampling requirements to verify whether permit conditions and limitations are being met. Discharge monitoring for the reissued permit should begin as soon as the permit becomes effective. Monitoring will be required pursuant to the schedule identified in the permit.

X. Electronic Reporting Requirements

On October 22, 2015, EPA published the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which requires electronic reporting of NPDES information rather than the previously required paper-based reports from permitted facilities. To comply with the federal rule, Permittees are required to submit Discharge Monitoring Reports (DMRs) electronically using the EPA NetDMR tool (Appendix A of 40 CFR Part 127).

XI. Sludge Requirements

The Permittee shall dispose of sludge generated at the Facility in accordance with 40 CFR Part 503. The Permittee has a current sludge plan entitled *Sludge Plan for Compliance with the Part 503 Rules for Potawatomi Facilities* (the Sludge Plan). The Permittee shall dispose of sludge in accordance with the Sludge Plan and shall follow all other requirements as outlined in the Supplemental Conditions of the permit dealing with sludge management and reporting. See the PBPN's Sludge Plan in the Administrative Record.

XII. Environmental Justice Screening

EPA performed an Environmental Justice (EJ) Screening of the community within a 3-mile Ring Centered at 39.311776, -95.751300 consisting of 28.27 square miles and an approximate population of 1,226 using the EJSCREEN tool. EJ areas of concern are determined by examining various environmental, demographic, and economic indicators. According to the screening tool, the data **does** indicate potential areas of EJ concern regarding the community surrounding the Facility.

EPA believes the permit is protective of this 3-mile Ring Centered on the Facility. See the EJScreen Community Report prepared August 11, 2023 in the Administrative Record.

XIII. Endangered Species Act

EPA and the U.S. Fish and Wildlife Service (Service) have signed a Memorandum of Agreement (EPA-823-F-01-002, January 2001) to work together to improve the implementation of the Endangered Species Act (ESA) and the CWA regarding NPDES permit actions.

The Service's Ecological Services Program through IPaC (Information for Planning and Consultation), for the general area around the PBPN Casino Complex WWTF in Jackson County, the listed endangered, threatened, and candidate species are mammals: Northern Long-eared Bat (endangered) and Tricolored Bat (proposed endangered); insects: Monarch Butterfly (candidate); and birds: there are no migratory birds of conservation concern expected to occur at this location. There are no critical habitats that intersect with this location.

The discharge point is in Jackson County and flows approximately 4.56 stream miles to the southern boundary of the PBPN Reservation and flows approximately an additional 4.91 stream miles to the Jackson-Shawnee county line.

The Kansas Department of Wildlife and Parks (KDWP) website for Jackson County lists the Least Tern (Endangered = E) as having Designated Critical Habitat. The Piping Plover Threatened = T), Snowy Plover (T), Eastern Spotted Skunk (T), and the American Burying Beetle (E) are listed as potentially present but do not have Designated Critical Habitat in Jackson County. Species in Need of Conservation (SINC) are the Black Tern; Short-eared Owl; Timber Rattlesnake; Creeper Mussel; Common Shriner; Henslow's Sparrow; Eastern Whip-poor-will; and Fatmucket Mussel.

For Shawnee County, the KDWP website lists the Silver Chub (E), Least Tern (E), Sturgeon Chub (T), Shoal Chub (T), Plains Minnow (T), Topeka Shiner (T), and Piping Plover (T) as having Designated Critical Habitat. The Whooping Crane (E), American Burying Beetle (E), Snowy Plover (T), and Eastern Spotted Skunk (T) are listed as potentially present but do not have Designated Critical Habitat in Shawnee County. Species in Need of Conservation (SINC) are River Shiner; Black Tern; Short-eared Owl; Ferruginous Hawk; Golden Eagle; Timber Rattlesnake; Southern Flying Squirrel; Tadpole Madtom; Blue Sucker; Creeper Mussel; Fawnsfoot Mussel; Common Shriner; Johnny Darter; Bobolink; Henslow's Sparrow; Yellow-throated Warbler; Cerulean Warbler; Eastern Whip-poor-will; Fatmucket Mussel; and Smooth Earth Snake.

The permit is for an existing mechanical wastewater treatment facility for a continuous discharge and will reauthorize currently permitted activities. There will be no new construction or disturbance of land, and thus there will be no negative impact on the environment, aquatic life, or wildlife species.

EPA believes there will be "no affect" on the federally listed threatened and/or endangered species in the project area by this proposed permitting action.

EPA consulted with the Service and the KDWP during the development of the permit and uploaded the statement of basis and permit documents to the Service and the KDWP individual websites for informal review. During the public comment period, the Service and the KDWP will have the opportunity to provide additional comments on EPA's determination.

XIV. Certification of CWA Section 401 Compliance

The Director of the Water Division will consider any comments received during the Public Notice comment period prior to issuance of the Water Quality Certification for the Facility.

XV. Permit Duration

The permit will be issued for a period of five years with the permit expiration date being determined at the time of permit issuance.

XVI. Procedures for Final Decision Making on the Permit

The comment period for the Public Notice (PN) of the permit starts with the date noted on the PN and ends 30 calendar days later. The PN requests comments from concerned individuals, agencies, or organizations. In accordance with 40 CFR § 124.17, EPA will respond to all significant comments properly submitted before the end of the 30-day public comment period. If a hearing on the permit is requested, or if there is a significant amount of interest expressed during the 30-day public comment period, a public hearing will be held on the contents of the permit. If no significant public comments are received, the discharge permit will be issued in accordance with the provisions of 40 CFR § 124.15.

XVII. EPA Contact for Additional Information

For additional information regarding the permit and the administrative process for making a final determination regarding issuance of the permit, please contact:

U.S. Environmental Protection Agency, Region 7
Water Division, Permits and Wetlands Branch
Attention: Alex Owutaka
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7584 or 1-(800) 223-0425
Fax: (913) 551-7884
E-mail: owutaka.alex@epa.gov