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Via Email and U.S. First Class Mail

Mr. John Tinger
U.S. EPA
75 Hawthorne Street (WTR-5)
San Francisco, CA 94105

SUBJECT: Proposed National Pollutant Discharge Elimination System (NPDES) Permit
Rumsey Band of Wintun Indians: Cache Creek Casino Resort, Brooks, CA

Dear Mr. Tinger:

The firm of Somach Simmons and Dunn (SSD) represents the County of Yolo (County) on certain environmental matters. In that capacity, we have reviewed the *Proposed NPDES Permit Rumsey Band of Wintun Indians: Cache Creek Casino Resort, Brooks, CA* (Proposed Permit), as issued by the United States Environmental Protection Agency (EPA) and submit the following comments on the County's behalf. Based on our review, we are concerned that the Proposed Permit fails to ensure that proposed new discharges from the Cache Creek Casino into Cache Creek will not cause or contribute to violations of applicable water quality standards. Further, the Proposed Permit fails to comply with applicable antidegradation policies, and is far less stringent than similarly issued permits by the State of California.

In light of these deficiencies, we contend that the Water Quality Control Board for the Central Valley Region (Regional Water Board) will be unable to certify that the Proposed Permit complies with state water quality standards, as is required by Clean Water Act (CWA) section 401. Moreover, the permit may not be issued unless and until EPA complies with the National Environmental Policy Act (NEPA) and evaluates and discloses the significant environmental affects that will result from the proposed new source of discharge and the casino project it facilitates, and alternatives to the discharge. Our comments on these issues and others are provided below.

Concurrently with this letter, the County hereby requests that a public hearing be held on the Proposed Permit. A public hearing on this matter is appropriate considering the significant deficiencies in the Proposed Permit and the potential harmful impact that this new source of discharge may have on a valuable local resource (i.e., Cache Creek).

I. The Proposed Permit Would Authorize A Prohibited New Discharge

The Proposed Permit is for a new discharge from the Cache Creek Casino Resort to an unnamed tributary of Cache Creek. As such, it is subject to specific requirements within the Code of Federal Regulations. In particular, the federal regulations prohibit the issuance of an NPDES permit by EPA or a state if the discharge will contribute to violation of water quality standards. In addition, when a new discharger is proposing to discharge into a water segment that is impaired, and where the state has adopted pollutant load allocations, the discharger must demonstrate before the close of the public comment period both of the following: (1) there are sufficient remaining pollutant load allocations to allow for the discharge; and (2) existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. (See 40 C.F.R. § 122.4(i); see also *Friends of Pinto Creek, et al., v. United States Environmental Protection Agency* (9th Cir. 2007) 504 F.3d 1007, 1015 [where the court specifically finds that EPA cannot issue a permit to a new discharger that has not complied with 40 C.F.R. § 122.4(i)].)

The Regional Water Board adopted Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Mercury in Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch (Cache Creek Mercury/Methylmercury TMDL), which are designed to meet CWA section 303 requirements – including load and wasteload allocation requirements. (See Resolution No. R5-2005-0146, Amending the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Mercury in Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch (Resolution No. R5-2005-0146) at p. 2.) Because there are adopted load allocations for mercury and methylmercury in Cache Creek and because the discharger is proposing a new discharge, the discharger is required to demonstrate that there are remaining sufficient pollutant load allocations for the discharge, and that existing dischargers are subject to compliance schedules to bring Cache Creek into compliance.

The Fact Sheet in support of the Proposed Permit recognizes the existence of the Cache Creek Mercury/Methylmercury TMDL and its load allocations, but fails to demonstrate that there are sufficient pollutant load allocations to accommodate this new discharge. (Fact Sheet Draft National Pollutant Discharge Elimination System (NPDES) Permit No. CA0084292 (Fact Sheet) at p. 11.) The Fact Sheet merely states that the wastewater treatment plant (WWTP) is not expected to contribute methylmercury loads in “measurable quantities.” (Fact Sheet at p. 11.) This statement does not actually evaluate if the adopted load allocations allow for any mercury or methylmercury discharges from domestic wastewater. In fact, review of the load allocations and the associated implementation program clearly indicate that the Regional Water Board did not account for, or anticipate any, domestic wastewater discharges into the Cache Creek watershed that may include methylmercury or mercury – measurable or otherwise. (See Resolution No. R5-2005-0146, at pp. 2-5.) Until the discharger and/or EPA can demonstrate that sufficient loading capacity

exists for the new discharge, the discharge is prohibited and EPA cannot issue the Proposed Permit.

Further, Cache Creek is listed for unknown toxicity. Until the state or EPA prepares a TMDL for unknown toxicity, the discharger can prove sufficient allocation, and existing dischargers are subject to compliance schedules to ensure compliance with toxicity standards, EPA is prohibited from issuing the Proposed Permit. (See 40 C.F.R. § 122.4(i); see also *Friends of Pinto Creek, supra*, 504 F.3d at p. 1015.)

II. The Proposed Permit Fails To Ensure Compliance With Applicable Water Quality Standards

As EPA is well aware, the federal CWA 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 any federal license or permit, which may result in a discharge to a water of the United States, be certified by the state declaring that the proposed discharge complies with state water quality standards. (CWA § 401.) State water quality standards include an antidegradation policy to protect beneficial uses and prevent further degradation of high quality waters. (33 U.S.C. § 1313(d)(4)(B); 40 C.F.R. § 131.12.) In California, water quality standards include the beneficial uses and water quality objectives established within Water Quality Control Plans (Basin Plans), and the state's antidegradation policy as embodied in Resolution 68-16 (Resolution 68-16). Further, the federal antidegradation policy requires the state to develop and adopt a statewide antidegradation policy that meets requirements specified by the federal regulations. (40 C.F.R. § 131.12.) The state's antidegradation policy in Resolution 68-16 complies with federal regulatory requirements and applies to the discharge from the Cache Creek Casino in the same manner as water quality standards. First, the CWA requires NPDES permits to contain effluent limitations that are necessary to meet and maintain water quality standards. (See CWA §§ 301(b)(1)(C), 402.) Second, the state cannot certify under CWA section 401 that the proposed discharge complies with state water quality standards if it fails to comply with the state's antidegradation policy, which incorporates the federal policy.

Further, federal regulations prohibit the issuance of a permit if "the imposition of conditions cannot ensure compliance with applicable water quality requirements of all affected states." (40 C.F.R. § 122.4(d).) Here, it is impossible to determine if the conditions imposed by EPA are sufficient because EPA and/or the discharger have failed to determine if the discharge is in compliance with state water quality standards – including state and federal antidegradation requirements.

A. 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 uses, and provide protection for higher quality and

outstanding national water resources. (40 C.F.R. § 131.12.) More specifically, the federal antidegradation policy includes differing requirements depending on the level of water quality currently existing in the water body in question. The three tiers of water quality under the federal policy are as follows:

Tier 1 waters represent those waters, or segments of water where water quality is not significantly better (on a constituent-by-constituent basis) than needed to meet designated uses (i.e., is not considered to be Tier 2 waters), either because the water just meets applicable water quality objectives and/or criteria to protect the beneficial uses, or does not meet applicable water quality objectives/criteria to protect beneficial uses. For constituents that fall in the Tier 1 category, the new discharge cannot cause Tier 1 waters to be impaired or worsen existing impairments.

Tier 2 waters are those waters with water quality (on a constituent-by-constituent basis) that are better than necessary to support beneficial uses. In such cases, the new discharge may not lower water quality unless it is necessary to accommodate important economic or social development. In August 2005, the EPA issued a memorandum discussing Tier 2 antidegradation reviews and significance thresholds (EPA 2005). As discussed in the memorandum, the intent of Tier 2 protection “is to maintain and protect high quality waters and not to allow for any degradation beyond a de minimis level without having made a demonstration, with opportunity for public input, that such lowering is necessary and important.” (Memorandum from Ephraim S. King, Director, Office of Science and Technology, U.S. EPA, Office of Water to Water Management Division Directors, Regions 1-10 (Aug. 2005) at p. 1.)

Tier 3 waters are those high quality waters which constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Cache Creek is not considered an outstanding national resource and therefore it is not subject to the requirements associated with Tier 3 waters.

Based on guidance developed by the EPA, Region 9 (Guidance on Implementing the Antidegradation Provisions of 40 C.F.R. § 131.12 (EPA 1987)), application of the federal antidegradation policy is triggered by a lowering, or potential lowering, of surface water quality. A proposed new discharge to a surface water is typically considered a trigger for the application of the federal antidegradation policy. Because the Cache Creek Casino Project proposes to include a new surface water discharge to a tributary of Cache Creek, the federal antidegradation policy is triggered and EPA must determine if Cache Creek is considered to be a Tier 1 water or a Tier 2 water for each constituent of concern in the effluent, or anticipated to be in the effluent.

To our knowledge, EPA and/or the discharger have not actually conducted the necessary analysis to determine if the proposed new discharge is in compliance with the federal antidegradation policy. The Proposed Permit and the Fact Sheet are both silent with

respect to determining compliance with the federal antidegradation policy. Further, the Proposed Permit, the Fact Sheet and the NPDES Permit Application all indicate that there is not sufficient data available of the effluent and/or the receiving water to properly determine compliance with the federal antidegradation policy.

B. Before Permitting A New Discharge, EPA Must Determine If The New Discharge Complies With The State Antidegradation Policy

As indicated previously, the state's antidegradation policy is part of the state's water quality standards. Resolution 68-16 states, in part:

1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

To implement Resolution 68-16 and the federal antidegradation policy, the State Water Resources Control Board (State Water Board) has developed two significant guidance documents. Although not directly applicable to EPA's issuance of an NPDES permit, the guidance documents are instructive and should be considered by EPA. At the very least, the Regional Water Board should consider EPA's compliance or non-compliance with the guidance documents as part of its CWA section 401 certification process. The first document, issued in 1987, provides when permitting a new discharge, Regional Water Boards in California (i.e., the permitting agency) must assure full protection of existing instream beneficial uses, that the lowering of water quality is necessary to accommodate important economic or social development, and that outstanding national resource waters will be maintained and protected. (See Memorandum to Regional Board Executive Officers, et al., from William Atwater, Chief Counsel, State Water Resources Control Board, regarding Federal Antidegradation Policy (Oct. 7, 1987).) This requirement is to ensure consistency with federal regulatory requirements, which also require compliance with water quality standards and protection of beneficial uses. (See 40 C.F.R. § 122.4(d).)

The second guidance document was issued in 1990 and is specific to implementation of the antidegradation policies for NPDES permitting actions. (See Administrative Procedures Update (APU) 90-004, Antidegradation Policy Implementation for NPDES Permitting.) Again, although the guidance document is not directly applicable to EPA as the permitting entity for this permit, APU 90-004 provides direction to determine compliance with the antidegradation policies, which are applicable to the discharge. The guidance requires the permitting agency to determine the need to make findings as to whether water quality degradation is permissible when balanced against benefit to the public. To make this determination, APU 90-004 sets forth two types of antidegradation analyses – a “simple” analysis and a “complete” analysis.

A complete antidegradation analysis is required if the proposed activity results in the following:

- A substantial increase in mass emissions of a pollutant, even if there is no other indication that the receiving waters are polluted; or
- Mortality or significant growth or reproductive impairment of resident species; or
- Issuance of a permit for any new discharge, including Section 401 certifications; or
- Material and substantial alterations to the permitted facility, such as relocation of an existing discharge; or
- Reissuance or modification of permits which would allow a significant increase in the concentration or mass emission of any pollutant in the discharge.
(APU 90-004, at p. 3.)

The Cache Creek Casino Project proposes to seek issuance of an NPDES permit for the discharge of treated effluent from the Cache Creek Wastewater Treatment Plant (WWTP) to Cache Creek. This is a new discharge; hence, a complete antidegradation is appropriate. Further, as indicated previously, the issuance of the NPDES permit is subject to state certification under section 401 of the CWA, which means that the state will need to make sure that the proposed new discharge complies with applicable water quality standards, including state and federal antidegradation requirements.

APU 90-004 prescribes a procedure for a complete antidegradation analysis, which includes the following three main elements: (1) compare receiving water quality to the water quality objectives established to protect designated beneficial uses; (2) balance the proposed action against the public interest; and, (3) prepare a report on the antidegradation analysis. (APU 90-004, at pp. 4-6.)

To our knowledge, no such or similar analysis has been prepared as set forth in the state’s guidance documents. Without an analysis similar to the one discussed above, EPA is

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unable to determine if the new discharge will be in compliance with applicable water quality requirements. More importantly, without such an analysis, the state is unable to determine if the proposed discharge will be in compliance with the state's water quality standards. If the state is unable to make such a determination, the state is unable to provide proper certification under section 401 of the CWA.

Instead of conducting an analysis as described herein and in the state's guidance documents, EPA provides cursory acknowledgment regarding the lack of available data and states, ". . . EPA does not expect the facility to discharge toxic pollutants that may cause or have the reasonable potential to cause or contribute to a violation of water quality standards for Cache Creek." (Fact Sheet at p. 7.) We are baffled as to how EPA can reach such a conclusion without evaluating receiving water data and data from the existing Cache Creek WWTP.

First, the Cache Creek Casino Resort includes numerous restaurants, a hotel, and ancillary services that all contribute to the treatment plant influent. If the ancillary services include dry cleaners, there may be potential for the discharge of carcinogenic compounds to the treatment plant. Additionally, depending on the potential industrial strength cleaning and disinfection products used in the restaurants and hotel, significant quantities of priority pollutants may be discharged to the treatment plant. Operations of the golf facility may also result in the discharge of fertilizers, pesticides and other priority pollutants to the treatment facilities. Considering the broad range of services to be provided at the Resort, it is not enough to state that no industrial sources will discharge to the Cache Creek WWTP.

Second, it is inappropriate for EPA to conclude that the treatment process and sources of domestic wastewater are of sufficient evidence to find that the facility will not have the reasonable potential to cause or contribute to a violation of water quality standards. To the contrary, there is sufficient evidence in the record to question EPA's statement as it applies to certain California Toxic Rule (CTR) standards. As EPA is well aware, the CTR includes water quality criteria for approximately 126 priority toxic pollutants, including criteria for several trihalomethanes (e.g., chlorodibromomethane, dichlorobromomethane). (40 C.F.R. § 131.38.) The wastewater treatment process for the Cache Creek facility includes chlorine for disinfection. (Fact Sheet at p. 3.) It is a well known fact that wastewater treatment processes that utilize chlorine disinfection often create an effluent that is high in trihalomethanes, or at least has levels of one or more trihalomethanes that exceed the CTR criteria. However, despite this well known understanding, EPA simply states that it does not expect the facility to discharge pollutants at levels that would have the reasonable potential to cause or contribute to a violation of an applicable water quality standard. We contend that the use of chlorine disinfection alone means that the effluent has reasonable potential to exceed applicable standards, at least until available data suggests otherwise.

Thus, in all, there is sufficient evidence available to suggest that the proposed discharge will not be able to comply with applicable water quality standards. At the very

least, a complete antidegradation analysis must be prepared before EPA and/or the state can determine if the proposed discharge meets state water quality requirements.

III. Specific Comments On Effluent Limitations And Monitoring Requirements

In addition to our comments above, our review of the Proposed Permit leaves us with considerable concerns and questions with respect to a number of the Proposed Permit requirements. Our specific comments on these requirements are provided here:

- The Proposed Permit does not contain an effluent limit for discharge flowrate. The primary purpose of an NPDES permit is to authorize the discharge of pollutants into waters of the state. In this case, the authorization for discharge must include a limitation associated with flow, or amount of discharge. Otherwise, the discharger may be allowed to discharge beyond the level anticipated in the Proposed Permit, which may result in a violation of a number of effluent limitations that are directly related to flow or mass.
- The Proposed Permit includes ammonia limitations that are floating limits based on temperature and pH, and include tables of the limitations as Appendices to the Proposed Permit. However, the Proposed Permit does not specify whether effluent, upstream, or downstream temperature and pH data are to be utilized in the calculations to determine the ammonia criteria, and subsequently ammonia limitations. Temperature is not specified to be monitored in the effluent, therefore the chronic ammonia criterion cannot be calculated for the effluent. Further, ammonia limitations are more stringent when salmonids are present in the receiving water, however the Proposed Permit does not specify which set of ammonia criteria should be used to calculate the effluent limitations. The COLD beneficial use is applied to Cache Creek, implying that the criteria to protect salmonids should be used to calculate ammonia criteria and effluent limitations. Finally, the State Water Board finds that floating limitations are inconsistent with the state's Implementation Policy for Priority Toxic Pollutants and that all limitations should be fixed. (See In the Matter of the Petition for Yuba City, Order WQO 2004-0013, at p. 9, fn. 19.)
- The concentration based limits for BOD and TSS are set in the permit based on the federal regulatory treatment standards for secondary treatment. (See Fact Sheet at p. 4.) However, the Cache Creek WWTP is a tertiary treatment system that is capable of meeting BOD and TSS limits that are more stringent than those contained in the Proposed Permit. Within the Central Valley Region, the Regional Water Board maintains a standard permitting practice that requires BOD and TSS effluent limits to be reflective of the technical capability of the tertiary treatment process where tertiary treatment is necessary to protect the beneficial uses. (See Waste Discharge Requirements for the City of Woodland Water Pollution Control Facility, Yolo County at p. 9, F-12, Attachment 1.) Because the Cache Creek

WWTP proposes to discharge into an effluent-dominated waterway and dilution will not be available, the tertiary treatment process used by the Cache Creek WWTP is most likely necessary to meet applicable water quality standards at the end-of-pipe. Thus, the Proposed Permit should include BOD and TSS limits that are reflective of plant capability to protect the beneficial uses.

- Total Coliform bacteria monitoring is specified as once per week. This monitoring requirement is insufficient. It is necessary to collect bacteria samples multiple times per week to better determine compliance with the effluent limitations and to protect public health. Otherwise, compliance for both the weekly median limit of 2.2 MPN/100 mL and daily maximum of 23 MPN/100 mL will be assessed by one sample per week under the Proposed Permit.
- Effluent limitations for mercury are specified as average monthly concentration limits, however monitoring is specified as once/year. Annual assessment of mercury cannot properly evaluate compliance with an average monthly limitation. Furthermore, the Proposed Permit fails to include monitoring requirements for methylmercury even though there is an adopted TMDL.
- The Proposed Permit will require whole effluent toxicity to be assessed only once per year. This monitoring requirement is completely inadequate, especially considering the fact that this is a new discharge. Annual toxicity monitoring is not sufficient to determine if the effluent will have acute or chronic impacts to aquatic life, and if the effluent will impair the beneficial uses. Further, the Proposed Permit suggests that both chronic and acute toxicity testing will be required. (Proposed Permit at p. 3.) However, Part IV of the Proposed Permit, which is referred to in the monitoring section, only details chronic toxicity testing requirements such as: allowing pH adjustment of the samples, chronic triggers, and TIE/TREs. (Proposed Permit at pp. 9-13.) There is no mention of requirements associated with acute toxicity testing.
- The Proposed Permit includes some of the Basin Plan objectives within the receiving water limitations section. However, the list of limitations, as taken from the Basin Plan, is incomplete and fails to include all applicable Basin Plan objectives. For example, the list of limitations does not include the water quality objective for pesticides. (Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (4th edition, revised Oct. 2007) at p. III-6.00.)
- The Proposed Permit includes a reopener clause that allows for the reduction in monitoring requirements for effluent ammonia, nitrate, oil and grease, and total dissolved solids if after 24 months sampling demonstrates no reasonable potential to cause or contribute to water quality standards. If eligible, monitoring may be reduced to a quarterly frequency. However, the Proposed Permit finds that there is reasonable potential for ammonia and nitrate based on the fact that domestic waste

contains ammonia in levels that may be toxic to aquatic life and ammonia is converted to nitrate in the treatment process. Thus, just by the nature of domestic wastewater there is reasonable potential for ammonia and nitrate. In other words, reasonable potential for ammonia and nitrate will remain regardless of compliance with effluent limitations and therefore it would be inappropriate to otherwise relax monitoring requirements.

- The EPA applications forms (i.e., Form 2A) are not adequately completed for EPA to consider the proposed discharge. For example, at page 8, only total Kjeldahl nitrogen (TKN) and total dissolved solid (TDS) information is provided even though information on ammonia, chlorine residual, dissolved oxygen, nitrate plus nitrite, oil and grease, and total phosphorous are also required. It appears that this information is available because the state-issued permit for recycled water use requires effluent monitoring of flow, turbidity, total chlorine residual, total Coliform organisms, pH, total dissolved solids, sodium, chloride, nitrate nitrogen, and total Kjeldahl nitrogen. (See Monitoring and Reporting Program No. R5-2006-0121, for the Rumsey Band of Wintun Indians, Cache Creek Golf Club Water Reclamation Project at pp. 1-2.) Thus, information for all of these constituents should be included in the discharger's application as part of Form 2A, and should be considered in permit development.
- It appears that because there is a lack of data and information, a formal reasonable potential analysis was not performed. In this case, the lack of data is inexcusable because the Cache Creek WWTP is already in existence and the discharger is able to monitor the effluent and the receiving water for all 126 priority toxic pollutants and other pollutants of concern. Prior to applying for the NPDES permit, the discharger (in conjunction with EPA) needs to properly monitor its effluent and Cache Creek to perform a proper antidegradation analysis as discussed above. Once such an analysis is performed, EPA can then conduct a formal reasonable potential analysis to determine if the proposed discharge will have reasonable potential to cause or contribute to a violation of water quality standards.

IV. The Proposed Permit May Not Be Issued Until EPA Complies With NEPA

The Notice and Fact Sheet are silent as to the steps EPA is taking to comply with NEPA in issuing the Proposed Permit. Because the permit being issued is for a new discharge, it is subject to review under NEPA. (See 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. 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. (42 U.S.C. § 4332(2)(C); *Friends of Pinto Creek, supra*, 504 F.3d at p. 1017.)

As described in the preceding comments, and demonstrated in the permit application and Fact Sheet, there is substantial evidence the proposed discharge may have significant impacts to water quality from chlorine due to its disinfection process. In addition, it is reasonable to assume the discharge may have a significant cumulative impact from its contribution of mercury. For other potential water quality constituents of concern, there is simply not enough information in the Proposed Permit and Fact Sheet to understand the potential impacts of the proposed discharge, further highlighting the need for a rigorous environmental review. We suspect that when sufficient information about the full range of potential pollutants is disclosed, including ammonia, chlorine residual, dissolved oxygen, nitrate plus nitrite, oil and grease, total phosphorous, and CTR constituents, that the data will demonstrate the potential for many significant impacts, each of which must be disclosed and mitigated.

Last, but certainly not least, issuance of the Proposed Permit is a necessary precondition to development of the casino expansion, which will result in numerous significant effects, including direct construction impacts associated with the excavation and offsite exportation of 280,000 cubic yards of soil, and the traffic, air quality, surface water quality, water supply, special-status species, hazardous material, public service, visual resource, wildland fire and cumulative impacts associated with a three-fold increase in the casino's building square footage. Some of those effects are described in the Tribal Environmental Impact Report (TEIR) prepared by the Tribe in 2008. In its comments on the TEIR (Attachment 2) the County described the many deficiencies in that document, further highlighting the need for EPA to conduct a comprehensive and legally adequate environmental review of the proposed discharge and the secondary impacts associated with permitting that discharge. Also, the Tribe has clearly articulated in their TEIR a feasible alternative to issuance of the Proposed Permit (i.e., on-site leach fields) that would avoid many of the impacts associated with this new source of discharge to Cache Creek. EPA should fully evaluate and publicly disclose the comparative impacts and benefits of this alternative prior to issuance of the Proposed Permit.

VI. Conclusion

In sum, EPA is prohibited from issuing the Proposed Permit until such time that there are sufficient load allocations for mercury and methylmercury and unknown toxicity; and, until such time sufficient information is available to determine if the proposed discharge will violate water quality standards. Further, the County has major concerns and reservations with the requirements contained in the Proposed Permit because such requirements are not sufficient to protect water quality. In addition, the monitoring requirements are insufficient to determine if the discharge is actually impacting water quality. Finally, because the Proposed Permit is for a new source of discharge that has the potential to have significant direct, indirect and cumulative effects on the environment, EPA may not issue the permit until it has complied with NEPA and prepared a legally adequate EIS.

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Due to the significant omissions and questions concerning the Proposed Permit, and the importance of Cache Creek as a resource, the County reiterates its request that EPA hold a public hearing on the Proposed Permit. Please also place the County on the notice list to receive any notices regarding the proposed discharge and Proposed Permit, including notices related to EPA's compliance with NEPA.

Sincerely,



Theresa A. Dunham

Attachments

cc: Ken Landau, Regional Water Board
Greg Vaughn, Regional Water Board
James Marshall, Regional Water Board
Lori Okun, Regional Water Board
Tim O'Halloran, General Manager, Yolo County Flood Control and Water
Conservation District
Matt Rexroad, Yolo County Supervisor
Jim Provenza, Yolo County Supervisor
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