

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**PERMIT FACT SHEET**  
**October 2021**

Permittee Name: White Mountain Apache Tribal Utility Authority

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Facility Location: Canyon Day  
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NPDES Permit No.: AZ0024058

Federal Identification code (FRS): 110024527635

## **I. STATUS OF PERMIT**

White Mountain Apache Tribal Utility Authority (the “permittee”) has applied for the renewal of their National Pollutant Discharge Elimination System (NPDES) permit to authorize the discharge of treated effluent from Whiteriver Sewage Lagoons (the “facility”) to the White River located in Gila County, Arizona. A complete application was submitted on April 25, 2021. EPA Region IX has developed this permit and fact sheet pursuant to Section 402 of the Clean Water Act (CWA), which requires point source dischargers to control the amount of pollutants that are discharged to waters of the United States through obtaining a NPDES permit.

The permittee is currently discharging under NPDES permit AZ0024058. The previous permit was effective until June 1, 2016 and administratively extended on March 30, 2021, pursuant to 40 CFR § 122.6.

This permittee has been classified as a Minor discharger.

## **II. SIGNIFICANT CHANGES TO PREVIOUS PERMIT**

<b>Permit Condition</b>	<b>Previous Permit (2016 – 2021)</b>	<b>Re-issued permit (2021 – 2026)</b>	<b>Reason for change</b>
Chronic Toxicity Effluent Limitations	No effluent limitations for chronic toxicity	Effluent limitations established for chronic toxicity	Effluent limits are established because reasonable potential exists for chronic toxicity

Sample Type for Turbidity	Sample type was grab	Sample type is composite	Required sample types are specified at 40 CFR Part 136
Sample Type for Total Ammonia (as N) and Dissolved Oxygen	Sample type was composite	Sample type is grab	Required sample types are specified at 40 CFR Part 136
Units for mass-based BOD and TSS effluent limits	Mass-based limits expressed as kg/day	Mass-based limits expressed as lbs/day	lbs/day is a more commonly used for expressing mass-based limits.
Monitoring for metals, hardness, and cyanide	Monitoring not required	Monitoring required once per permit term	Information gathering about possible pollutants within discharge.

### III. GENERAL DESCRIPTION OF FACILITY

Whiteriver Sewage Lagoons is located on tribal lands within the Fort Apache Reservation. The facility serves a total population of approximately 12,000 people, and receives wastewater from the nearby towns of Whiteriver, East Fork, and Canyon Day. The facility does not receive any significant contributions from industrial facilities.

The facility has a design flow of 0.7 million gallons per day (MGD). Last year, the annual average flow rate was approximately 0.6 MGD, with a maximum daily flow rate of 1.04 MGD.

The facility treats wastewater in a series of six facultative ponds which provide the equivalent to secondary level of treatment, as defined under 40 CFR § 133.105. Wastewater entering the facility is fed through a bar screen, and then half is pumped into lagoon 1 (followed by lagoon 2 and 3) and half is pumped into lagoon 4 (followed by lagoon 5 and 6). After wastewater passes through three lagoons, it is combined and flows to lagoon 7. The effluent is disinfected using UV disinfection, and discharged from Outfall 001 located at 33° 46' 04.98" N Latitude and 110° 02' 57.50" W Longitude in Gila county, Arizona.

The facility is not equipped with sludge processing equipment. The facultative ponds include integrated fermentation pits, which degrade biosolids and minimize the need for sludge removal; thus, there is no need for biosolids removal plan. Solids from the bar screens are disposed of offsite.

### IV. DESCRIPTION OF RECEIVING WATER

Discharge from Outfall 001 flows into an unnamed stream, which runs approximately 2,000 feet to the White River, a water of the United States. The White River is a 16-mile long perennial tributary to the Salt River that lies entirely within the Fort Apache Indian Reservation.

White Mountain Apache Tribe of the Fort Apache Indian Reservation has adopted water quality standards, which include designated uses and water quality criteria for White River. The currently applicable water quality standards were approved on September 27, 2001.

There are no known impairments or applicable TMDLs for the White River.

## V. DESCRIPTION OF DISCHARGE

Table 1 shows data related to discharge from Outfall 001 based on permittee's NPDES discharge monitoring reports (DMRs). More information is available on Enforcement and Compliance History Online (ECHO) at <https://echo.epa.gov/detailed-facility-report?fid=110024527635>.

Pollutants believed to be absent or never detected in the effluent are not included. The data show elevated concentrations of ammonia, BOD<sub>5</sub> (mg/L, kg/day, and percent removal), total suspended solids (mg/L, kg/day, and percent removal), nitrate (as N), *E. Coli*, and turbidity. Additionally, the data show elevated pH and low concentrations of DO. All exceedances are discussed further in Part VI.B.4.

Table 1. Effluent Data for Outfall 001 from 2016 to 2021.

Parameter	Units <sup>(1)</sup>	2016 - 2021 Permit Effluent Limitations			Effluent Data			
		Average Monthly	Average Weekly	Maximum Daily	Highest Average Monthly	Highest Average Weekly	Highest Maximum Daily	Number of Samples
Flow Rate	MGD	(5)	--	(5)	1.01	--	1.04	54
Temperature	°C	(5)	--	32.2	30.9	--	30.9	52
Ammonia (as N)	mg/L	(5)	--	(5)	11.2	--	11.2	53
Ammonia Impact Ratio (AIR)	Ratio	1.0 <sup>(2)</sup>	--	1.0 <sup>(2)</sup>	(6)	--	(6)	
Dissolved Oxygen	mg/L	Minimum of 5.0 mg/L at all times			1.6 (minimum)			58
Biochemical Oxygen Demand; 5-day (BOD <sub>5</sub> )	mg/L	45	65	--	250	250	--	55
	kg/day	119.24	172.24	--	751.3	751.3	--	
	Percent Removal	65 % (minimum) <sup>(3)</sup>			-7.12% (minimum)			57
Oil and Grease, total recoverable	mg/L	10	--	15	5.3	--	5.3	53
Nitrate (as N)	mg/L	(5)		10	14	--	14	53
Total Suspended Solids (TSS)	mg/L	45	65	--	100	100	--	54
	kg/day	119.24	172.24	--	215	215	--	
	Percent Removal	65 % (minimum) <sup>(3)</sup>			-4.55% (minimum)			58

Parameter	Units <sup>(1)</sup>	2016 - 2021 Permit Effluent Limitations			Effluent Data			
		Average Monthly	Average Weekly	Maximum Daily	Highest Average Monthly	Highest Average Weekly	Highest Maximum Daily	Number of Samples
Phosphorus, total	mg/L	(5)	--	(5)	3.8	--	3.8	53
<i>E. Coli</i>	CFU/100 mL	47.00 <sup>(7)</sup>	--	88.00	2419.6 <sup>(6)</sup>	--	2419.6	11
Turbidity	NTU	--	--	25	--	--	53.2	56
pH	Standard Units	Not < 6.5 SU, Not > 9.0 SU			6.98 – 9.49 (min-max)			54

(1) Mass based limits calculated using 0.7 MGD flow.

(2) Both the influent and the effluent shall be monitored. The arithmetic mean of the BOD<sub>5</sub> values or of the TSS values, by concentration, for effluent samples collected over a calendar month shall not exceed 35 percent of the arithmetic mean, by concentration, for influent samples collected at approximately the same times during the same period (i.e. 65 percent BOD<sub>5</sub> removal; 65 percent TSS removal).

(3) When monitoring for total ammonia (as nitrogen), pH monitoring must be concurrent. The Ammonia Impact Ratio (AIR) is calculated as the ratio of the ammonia value in the effluent and the applicable ammonia standard from the Table for Warmwater Habitat in Appendix A of White Mountain Apache Tribe's Water Quality Standards. See Attachment D for a sample log to help calculate and record the AIR values. The AIR is the ammonia effluent limit and must be reported in the DMRs in addition to the ammonia-N and pH effluent values.

(4) See Part III.C, Special Conditions – Chronic WET Requirements, of this permit for details of the chronic WET test requirement. All chronic WET tests must be “Pass,” and no test may be “Fail.” “Pass” constitutes a rejection of the null hypothesis. Testing shall be conducted concurrent with testing for all other parameters.

(5) No effluent limits were set, but monitoring and reporting were required.

(6) The permittee did not submit AIR data for the 2016-2021 permit term.

(7) This value is a geometric mean (of one month's data) for E.coli.

## VI. DETERMINATION OF NUMERICAL EFFLUENT LIMITATIONS

EPA has developed effluent limitations and monitoring requirements in the permit based on an evaluation of the technology used to treat the pollutant (i.e., “technology-based effluent limits”) and the water quality standards applicable to the receiving water (i.e., “water quality-based effluent limits”). EPA has established the most stringent of applicable technology-based or water quality-based standards in the permit, as described below.

### A. Applicable Technology-Based Effluent Limitations

#### *Publicly Owned Wastewater Treatment Systems (POTWs)*

EPA developed technology-based treatment standards for municipal wastewater treatment plants in accordance with Section 301(b)(1)(B) of the CWA. The applicable technology-based standards for a lagoon system such as that used at the Whiteriver Sewage Lagoons are those of the category known as “Equivalent to Secondary Treatment”. The minimum levels of effluent quality attainable by equivalent-to-secondary treatment for Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), and pH, as defined in 40 CFR 133.105, are listed below and are incorporated into the permit:

BOD<sub>5</sub>

## Concentration-based Limits

30-day average – 45 mg/L

7-day average – 65 mg/L

Removal Efficiency – minimum of 65%

## Mass-based Limits

30-day average – (45 mg/L)(0.7 MGD)(8.345 conversion factor) = 262.87 lbs/day

7-day average – (65 mg/L)(0.7 MGD)(8.345 conversion factor) = 379.70 lbs/day

TSS

## Concentration-based Limits

30-day average – 45 mg/L

7-day average – 65 mg/L

Removal efficiency – Minimum of 65%

## Mass-based Limits

30-day average – (45 mg/L)(0.7 MGD)(8.345 conversion factor) = 262.87 lbs/day

7-day average – (65 mg/L)(0.7 MGD)(8.345 conversion factor) = 379.70 lbs/day

pH

Instantaneous Measurement: 6.0 – 9.0 standard units (S.U.)

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

**B. Water Quality-Based Effluent Limitations**

Water quality-based effluent limitations are required in NPDES permits when the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above any water quality standard (40 CFR § 122.44(d)(1)).

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

EPA evaluated the reasonable potential to discharge toxic pollutants according to guidance provided in the *Technical Support Document for Water Quality-Based Toxics Control* (TSD) (Office of Water, U.S. EPA, March 1991) and the *U.S. EPA NPDES Permit Writers' Manual* (Office of Water, U.S. EPA, September 2010). These factors include:

1. Applicable standards, designated uses and impairments of receiving water
2. Dilution in the receiving water
3. Type of industry
4. History of compliance problems and toxic impacts
5. Existing data on toxic pollutants - Reasonable Potential Analysis

### **1. Applicable Standards, Designated Uses and Impairments of Receiving Water**

Water quality standards adopted by the White Mountain Apache Tribe and approved by EPA establish water quality criteria for the following beneficial uses in White River: warmwater habitat, irrigation, domestic/industrial water supply, groundwater recharge, livestock & wildlife, primary contact, ceremonial primary contact, gathering of plants, and cultural significance.

White River is not listed as impaired according to the CWA § 303(d) List of Water Quality Limited Segments. No TMDLs have been developed for the White River. This permit contains a provision that allows this permit to be reopened to include any TMDL related requirements from TMDLs developed and approved in the future.

### **2. Dilution in the Receiving Water**

The permittee has not requested a mixing zone or provided a dilution study; therefore, no dilution was considered in the reasonable potential analysis or development of water quality-based effluent limits applicable to the discharge

### **3. Type of Industry**

For POTWs, typical pollutants of concern in untreated and treated domestic wastewater include ammonia, nitrate, oxygen demand, pathogens, temperature, pH, oil and grease, and solids. The influent to the facility comes from residential sources; no industrial sources discharge to the facility. Turbidity may also be of concern due to treatment plant operations.

### **4. History of Compliance Problems and Toxic Impacts**

In the 2016 -2021 permit term, the facility exceeded permit limits for BOD, TSS, pH, nitrogen, turbidity, E. coli and dissolved oxygen. Additionally, discharge monitoring reports were submitted late June 2016 – December 2017, and April 2018 – September 2018. The facility has not completed the asset management planning required by the 2016 permit.

There were operational concerns identified in the June 2019 inspection of the facility. The UV disinfection system was non-operational at the time of the inspection, so effluent was being discharged without disinfection. Additionally, grab samples were collected for all parameters, and an influent bypass channel allowed influent to flow around the bar screen.

### **5. Existing Data on Toxic Pollutants**

For pollutants with effluent data available, EPA has conducted a reasonable potential analysis based on statistical procedures outlined in EPA's *Technical Support Document for Water Quality-based Toxics Control* herein after referred to as EPA's TSD (EPA 1991). These

statistical procedures result in the calculation of the projected maximum effluent concentration based on monitoring data to account for effluent variability and a limited data set. The projected maximum effluent concentrations were estimated assuming a coefficient of variation of 0.6 and the 99 percent confidence interval of the 99<sup>th</sup> percentile based on an assumed lognormal distribution of daily effluent values (sections 3.3.2 and 5.5.2 of EPA's TSD). EPA calculated the projected maximum effluent concentration for each pollutant using the following equation:

$$\text{Projected maximum concentration} = C_e \times \text{reasonable potential multiplier factor.}$$

Where, “C<sub>e</sub>” is the reported maximum effluent value and the multiplier factor is obtained from Table 3-1 of the TSD.

#### Summary of Reasonable Potential Statistical Analysis:

Parameter <sup>(1)</sup>	Maximum Observed Concentration	n	RP Multiplier	Projected Maximum Effluent Concentration	Most Stringent Water Quality Criterion <sup>(2)</sup>	Statistical Reasonable Potential?
Temperature	30.9 °C	52	1.5	45.1 °C	32.2 °C	Y
Ammonia	11.2 mg/L	53	1.6	17.9 mg/L	0.11 mg/L	Y
Dissolved Oxygen	1.6 mg/L (minimum)	58	--	--	5.0 mg/L (minimum)	Y
Oil and Grease, total recoverable	5.3 mg/L	55	1.1	5.83 mg/L	10 mg/L	N
Nitrate (as N)	14 mg/L	53	4.5	63 mg/L	10 mg/L	Y
E. Coli	2419.6 CFU/100mL	61	2.2	5323.12 CFU/100mL	47.00 CFU/100 mL	Y
Turbidity	53.2 NTU	56	1.7	90.4	25 NTU	Y
pH	6.98 – 9.49 SU	54	--	--	6.5 – 9.0 SU at all times	Y

(1) For purposes of RP analysis, parameters measured as Non-Detect are considered to be zeroes. Only pollutants detected are included in this analysis.

(2) Taken from the White Mountain Apache Tribe Water Quality Standards.

### C. Rationale for Numeric Effluent Limits and Monitoring

EPA evaluated the typical pollutants expected to be present in the effluent and selected the most stringent of applicable technology-based standards or water quality-based effluent limitations. Where effluent concentrations of toxic parameters are unknown or are not reasonably expected to be discharged in concentration that have the reasonable potential to cause or contribute to water quality violations, EPA may establish monitoring requirements in the permit. Where monitoring is required, data will be re-evaluated and the permit may be re-opened to incorporate effluent limitations as necessary.

*Flow*

No limits established for flow, but flow rates must be monitored and reported. Monitoring is required weekly.

*BOD<sub>5</sub> and TSS*

Limits for BOD<sub>5</sub> and TSS are established as described above and are incorporated into the permit. Under 40 CFR § 122.45(f), mass limits are also required for BOD<sub>5</sub> and TSS. Based on the design flow, the mass-based limits are included in the permit. Monitoring is required monthly.

*Ammonia and Ammonia Impact Ratio*

Treated and untreated domestic wastewater may contain levels of ammonia that are toxic to aquatic organisms. Ammonia is converted to nitrate during biological nitrification process, and then nitrate is converted to nitrogen gas through biological denitrification process. Due to the potential for ammonia to be present in sanitary wastewater at toxic levels and due to the conversion of ammonia to nitrate, effluent limitations are established using the Ammonia Impact Ratio (“AIR”) for all facilities.

The AIR is calculated as the ratio of the ammonia value in the effluent to the applicable ammonia water quality standard. The White Mountain Apache Tribe Water Quality Standards contain ammonia criteria which are pH and temperature dependent. Therefore, pH, temperature, and ammonia sampling must be concurrent. See Attachment D of the permit for a sample log to help calculate and record the AIR values and Attachment E for applicable Water Quality Standards.

The permittee also must monitor and report ammonia effluent values in addition to the AIR value. AIR provides more flexibility than a specific, fixed effluent concentration and is protective of water quality standards since the value is set relative to the water quality standard. If the reported value exceeds the AIR limitation, then the effluent ammonia-N concentration exceeded the ammonia water quality criterion.

*pH*

The applicable water quality standards establish that pH shall not be below 6.5 SU or above 9.0 SU, which is more stringent than the technology-based effluent limit of 6.0 – 9.0 SU. EPA retains the effluent limit of 6.5 – 9.0 SU in the permit. Monitoring is required weekly.

*Temperature*

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards for temperature. A temperature limit of 32.2°C is retained in the permit, and monitoring is required weekly. Additionally, applicable narrative standards for temperature are incorporated into the permit. Effluent monitoring for temperature must be concurrent with ammonia and pH, as stated above.

*Dissolved Oxygen*

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards

for dissolved oxygen. Therefore, the permit retains an effluent limit of 5 mg/L as a minimum for dissolved oxygen based on the applicable water quality standards. Monitoring is required monthly.

#### *Oil and Grease*

Although there is not a statistical reasonable potential for oil and grease levels to exceed applicable water quality criteria, EPA is carrying over the limit from the previous permit term. POTWs have the potential to discharge oil and grease, as oil and grease may be present in the influent and are not removed in the treatment process at this facility. White Mountain Apache water quality standards include following narrative standard: "All waters shall be free from visible oils, scum, foam, grease and other floating materials and suspended substances of a persistent nature resulting from other than natural causes." An average monthly limit of 10 mg/L and a maximum daily limit of 15 mg/L are retained in the permit to ensure this narrative criterion is met. Monitoring is required monthly.

#### *Nitrate*

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards for nitrate. Therefore, the permit retains a maximum daily effluent limit of 10 mg/L. Monitoring is required monthly.

#### *Turbidity*

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards for turbidity. Therefore, the permit retains a maximum daily effluent limit of 25 NTU for turbidity. Monitoring is required monthly.

#### *E. Coli*

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards for *E. Coli*. Therefore, the permit contains an average monthly effluent limit of 47.00 CFU/100 mL and a maximum daily effluent limit of 88 CFU/100mL for *E. Coli* are retained in the permit. Monitoring is required monthly.

### **D. Anti-Backsliding**

Section 402(o) and 303(d)(4) of the CWA and 40 CFR § 122.44(l)(1) prohibits the renewal or reissuance of an NPDES permit that contains effluent limits and permit conditions less stringent than those established in the previous permit, except as provided in the statute and regulation.

The permit does not establish any effluent limits less stringent than those in the previous permit and does not allow backsliding.

### **E. Antidegradation Policy**

EPA's antidegradation policy under CWA § 303(d)(4) and 40 CFR § 131.12 and White Mountain Apache Tribe Water Quality Standards require that existing water uses and the level of water quality necessary to protect the existing uses be maintained.

As described in this document, the permit establishes effluent limits and monitoring requirements to ensure that all applicable water quality standards are met. The permit does not include a mixing zone, therefore these limits will apply at the end of pipe without consideration of dilution in the receiving water. The waterbody is not listed as an impaired waterbody under section 303(d) of the CWA.

Therefore, due to the water quality-based effluent limitations, the discharge is not expected to adversely affect receiving water bodies or result in any degradation of water quality.

## **VII. NARRATIVE WATER QUALITY-BASED EFFLUENT LIMITS**

The White Mountain Apache Tribe Water Quality Standards contain narrative water quality standards applicable to the receiving water. Therefore, the permit incorporates applicable narrative water quality standards.

## **VIII. MONITORING AND REPORTING REQUIREMENTS**

The permit requires the permittee to conduct monitoring for all pollutants or parameters where effluent limits have been established, at the minimum frequency specified. Additionally, where effluent concentrations of toxic parameters are unknown or where data are insufficient to determine reasonable potential, monitoring may be required for pollutants or parameters where effluent limits have not been established.

### **A. Effluent Monitoring and Reporting**

The permittee shall conduct effluent monitoring to evaluate compliance with the permit conditions. The permittee shall perform all monitoring, sampling and analyses in accordance with the methods described in the most recent edition of 40 CFR § 136, unless otherwise specified in the permit. All monitoring data shall be reported on monthly DMRs and submitted quarterly as specified in the permit. All DMRs are to be submitted electronically to EPA using NetDMR.

### **C. Whole Effluent Toxicity (WET) Requirements**

Aquatic life is a public resource protected in surface waters covered by the CWA. As evidence that CWA requirements protecting aquatic life from chronic and acute toxicity are met in surface waters receiving the NPDES discharge, samples are collected from the effluent and tested for toxicity in a laboratory using EPA's WET methods. These aquatic toxicity test results are used to determine if the NPDES effluent causes toxicity to aquatic organisms. Toxicity testing is important because for scores of individual chemicals and compounds, chemical-specific environmentally protective levels for toxicity to aquatic life have not been developed, or set as water quality standards. In due course, some such chemicals and compounds can eventually make their way into effluents and their receiving surface waters. When this happens, toxicity tests of effluents can demonstrate toxicity due to present, but unknown, toxicants

(including possible synergistic and additive effects), signaling a water quality problem for aquatic life.

EPA's WET methods are systematically-designed instructions for laboratory experiments that expose sensitive life stages of a test species (e.g., fish, invertebrate, algae) to both an NPDES effluent sample and a negative control sample. During the toxicity test, each exposed test organism can show a difference in biological response; some will be undesirable differences. Examples of undesirable biological responses include, but are not limited to, eggs not fertilized, early life stages that grow too slowly or abnormally, or death. At the end of a toxicity test, the different biological responses of the organisms in the effluent group and the organisms in the control group are summarized using common descriptive statistics (e.g., means, standard deviations, coefficients of variation). The effluent and control groups are then compared using an applicable inferential statistical approach (i.e., hypothesis testing or point estimate model) chosen by the permitting authority and specified in the NPDES permit. The chosen statistical approach is compatible with both the experimental design of the WET method and the applicable toxicity water quality standard. Based on this statistical comparison, a toxicity test will demonstrate that the effluent is either toxic or not toxic, in relation to the permit's toxicity level for the effluent, which is set to protect the quality of surface waters receiving the NPDES discharge. EPA's WET methods are specified under 40 CFR § 136 and/or in applicable water quality standards.

EPA recommends inferential statistical approaches that a permitting authority chooses from to set a protective level for toxicity in an NPDES discharge. The statistical approach chosen for this permit is based on bioequivalence hypothesis testing and is called the Test of Significant Toxicity (TST) statistical approach. It is described in *National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document* (EPA 833-R-10-004, 2010; TST Technical Document) and Denton DL, Diamond J, and Zheng L. 2011. Test of significant toxicity: A statistical application for assessing whether an effluent or site water is truly toxic. *Environ Toxicol Chem* 30:1117-1126. This statistical approach supports important choices made within a toxicity laboratory which favor quality data and EPA's intended levels for statistical power when true toxicity is statistically determined to be unacceptably high ( $\geq 25$  PE, Percent (%) Effect), or acceptably low ( $< 10$  PE). Example choices are practices supporting healthy test organisms, increasing the minimum recommended replication component of the WET method's experimental design (if needed), technician training, etc. TST results do not often differ from other EPA-recommended statistical approaches using hypothesis testing (Diamond D, Denton D, Roberts J, Zheng L. 2013. Evaluation of the Test of Significant Toxicity for determining the toxicity of effluents and ambient water samples. *Environ Toxicol Chem* 32:1101-1108.). The TST maintains EPA's desired low false positive rate for WET methods—the probability of declaring toxicity when true toxicity is acceptably low  $\leq 5\%$ —when quality toxicity laboratories conduct toxicity tests (TST Technical Document; Fox JF, Denton DL, Diamond J, and Stuber R. 2019. Comparison of false-positive rates of 2 hypothesis-test approaches in relation to laboratory toxicity test performance. *Environ Toxicol Chem* 38:511-523.). Note: The false positive rate is a long-run property for the toxicity laboratory conducting a WET method. A low false positive rate is indicted by a low long-run toxicity laboratory control coefficient of variation for the test species/WET method, using a minimum of 30 to 50 toxicity tests.

The following chronic toxicity test results are DMR submissions representative of the effluent discharge monitored during the previous permit term. Results are analyzed using the TST statistical approach described in Appendix B of the TST Technical Document.

**Table 2. Chronic Toxicity Data Summary and Reasonable Potential Determination.**

Toxicity test initiation & completion dates	Test species/WET method	Chronic toxicity test did not reject (Fail "1"), or rejected (Pass "0"), TST null hypothesis	Associated PE	Number of replicates (n)	Reasonable potential if Fail (1) and/or associated PE $\geq$ 10
10/18/2016-10/25/2016	<i>C. dubia</i> /7-day survival and reproduction	Pass "0"	-22.0%	10	N
10/18/2016-10/25/2016	<i>P. promelas</i> /7-day larval survival and growth	Pass "0"	-5.28%	4	N
10/17/2016-10/21/2016	<i>P. subcapitata</i> <sup>(1)</sup> /growth test	Pass "0"	-16.22%	4	N
8/23/2016-8/30/2016	<i>C. dubia</i> /7-day survival and reproduction	Pass "0"	-19.15%	10	N
8/23/2016-8/30/2016	<i>P. promelas</i> /7-day larval survival and growth	Fail "1"	19.25%	4	Y
8/22/2016-8/26/2016	<i>P. subcapitata</i> <sup>(1)</sup> /growth test	Pass "0"	-9.01%	4	N

(1) Formerly known as *S. capricornutum*

In accordance with 40 CFR § 122.44(d)(1), reasonable potential for chronic toxicity has been established. This is because at least one chronic toxicity test result is Fail (1) indicating unacceptable toxicity is present in the effluent or at least one associated PE (Percent (%) Effect) value is  $\geq$  10 indicating toxicity at a level higher than acceptable is present in the effluent (see Table 2 and section 1.4 in TST Technical Document). Thus, chronic toxicity WQBELs are required for the permitted discharge (40 CFR § 122.44(d)(1)). As a result, monitoring and reporting for compliance with median monthly and maximum daily effluent limits for the parameter of chronic toxicity are required, so that effluent toxicity can be assessed in relation to these WQBELs for the permitted discharge (see Part I, Table 2 in NPDES permit).

In accordance with 40 CFR § 122.44(d)(1)(ii), in setting the permit's levels for chronic toxicity and conditions for discharge, EPA is using a test species/chronic short-term WET method and a discharge Instream Waste Concentration (IWC) representing conservative

assumptions for effluent dilution necessary to protect receiving water quality. The IWC is a discharge-specific term based on the permit's authorized mixing zone or initial dilution. Generally, the dilution model result "S" from Visual Plumes/Cormix is used. S is the volumetric dilution factor, i.e. 1 volume effluent is diluted with S - 1 volumes surface water) =  $[(Ve + Va) / Ve]$ . Following the mass balance equation, if the dilution ratio  $D = Qs / Qe$ , then  $[(Qe + Qs) / Qe] = 1 + D = S$ .

For this discharge,  $S = 1$  (i.e., no authorized dilution). The discharge-specific IWC = 1 to 1 dilution (1:1, 1/1) = 100% effluent. The IWC made by the toxicity laboratory is mixed as 1 part solute (i.e., effluent) to 0 parts dilutant (1: (1 - 1)) for a total of 1 part.

The TST's null hypothesis for chronic toxicity ( $H_0$ ) is: In-stream Waste Concentration (IWC) mean response (% effluent)  $\leq 0.75$  Control mean response. The TST's alternative hypothesis is ( $H_a$ ): IWC mean response (% effluent)  $> 0.75$  Control mean response. For this permit, results obtained from a single chronic toxicity test are analyzed using the TST statistical approach, where the required chronic toxicity IWC for Discharge Point Number 001 is 100% effluent.

For NPDES samples for toxicity testing, the sample hold time begins when the 24-hour composite sampling period is completed (or the last grab sample in a series of grab samples is taken) and ends at the first time of sample use (initiation of toxicity test). 40 CFR § 136.3(e) states that the WET method's 36-hour hold time cannot be exceeded unless a variance of up to 72-hours is authorized by EPA. In a June 29, 2015 inter-office memorandum, EPA Region 9 authorized a hold time variance of up to 72-hours applicable only to Pacific Island Territory permittees **which ship the NPDES sample to the continental U.S. for toxicity testing**, with conditions (see NPDES permit).

For this discharge, EPA has set a median monthly effluent limit and a maximum daily effluent limit (40 CFR § 122.45(d)) for chronic toxicity. These limits are set to restrict the discharge of toxic pollutants in toxic amounts and protect both applicable aquatic life water quality standards, including standards downstream of the discharge, and existing aquatic life beneficial uses in receiving waters (CWA §§ 101(a)(3), 301(b)(1)(C)). The median monthly WQBEL, of no more than 1 of a maximum of 3 chronic toxicity tests with unacceptably high toxicity declared by the TST statistical approach, ensures a high probability of declaring such discharges toxic. The maximum daily WQBEL, of 1 toxicity test rejecting the TST null hypothesis and an associated chronic biological endpoint  $PE < 50$  (2x the TST's chronic toxicity Regulatory Management Decision (RMD) of 25 PE), ensures the restriction of highly toxic (chronic, acute) discharges. Both effluent limits take in to account that, on occasion, quality toxicity laboratories conducting effluent toxicity tests can incorrectly declare a sample with acceptable toxicity "toxic" ( $\leq 5\%$  of the time when the true toxicity of the discharge is  $< 10$  PE).

For POTWs, it is not practicable (40 CFR § 122.45(d)) for EPA to set an average (median) weekly effluent limit, in lieu of a maximum daily effluent limit. This is because discharges of unacceptable toxicity—true chronic toxicity  $\geq 25$  PE, the TST's chronic toxicity RMD—are not adequately restricted by two effluent limits (median weekly and median monthly) each using a median of up to 3 toxicity test results. Under such limits, a highly toxic (chronic, acute) discharge could occur with no restriction. Moreover, using two such median limits further

decreases the probability that an effluent with unacceptable toxicity will be caught, resulting in a permitted discharge which under-protects the aquatic life from unacceptable chronic toxicity.

Species sensitivity screening for chronic toxicity is not an automatic requirement in this permit. However, the permit retains a species sensitivity screening condition as an option for the permitting authority to exercise, particularly when the quality of the permitted discharge has changed, or is expected to change, during the permit term.

## **IX. SPECIAL CONDITIONS**

### **A. Biosolids**

Standard requirements for the monitoring, reporting, recordkeeping, and handling of biosolids in accordance with 40 CFR § 503 are incorporated into the permit. The permit also includes, for dischargers who are required to submit biosolids annual reports, which include major POTWs that prepare sewage sludge and other facilities designated as “Class 1 sludge management facilities”, electronic reporting requirements. Permittees shall submit biosolids annual reports using EPA’s NPDES Electronic Reporting Tool (“NeT”) by February 19<sup>th</sup> of the following year.

### **B. Pretreatment**

EPA has established pretreatment standards to prevent the introduction of pollutants into POTWs which will interfere with or pass through the treatment works, and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges (Section 307 of the CWA). EPA requires any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 MGD and receiving from nondomestic sources pollutants which pass through or interfere with the operations of the POTW or are otherwise subject to pretreatment standards to establish a pretreatment program.

There are no nondomestic facilities discharging pollutants which pass through or interfere with the operations of this POTW, or which are otherwise subject to pretreatment standards. Therefore, there are no pretreatment requirements in this permit.

### **C. Capacity Attainment and Planning**

The permit requires that a written report be filed within ninety (90) days if the average dry-weather wastewater treatment flow for any month exceeds 90 percent of the annual dry weather design capacity of the waste treatment and/or disposal facilities.

### **D. Development and Implementation of Best Management Practices**

Pursuant to 40 CFR § 122.44(k)(4), EPA may impose Best Management Practices (BMPs) which are “reasonably necessary...to carry out the purposes of the Act.” The pollution prevention requirements or BMPs in the permit operate as technology-based limitations on effluent discharges that reflect the application of Best Available Technology and Best Control Technology. Therefore, the permit requires that the permittee develop (or update) and implement a Pollution Prevention Plan with appropriate pollution prevention measures or BMPs designed to prevent pollutants from entering White River and other surface waters while performing normal processing operations at the facility.

**E. Asset Management**

40 CFR § 122.41(e) requires permittees to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of this permit. Asset management planning provides a framework for setting and operating quality assurance procedures and ensuring the permittee has sufficient financial and technical resources to continually maintain a targeted level of service. Asset management requirements have been established in the permit to ensure compliance with the provisions of 40 CFR § 122.41(e).

**X. OTHER CONSIDERATIONS UNDER FEDERAL LAW****A. Consideration of Environmental Justice**

EPA conducted a screening level evaluation of vulnerabilities in the community posed to local residents near the vicinity of the permitted facility using EPA's EJSCREEN tool. The purpose of the screening is to identify areas disproportionately burdened by pollutant loadings and to consider demographic characteristics of the population living in the vicinity of the discharge when drafting permit conditions.

In March, 2021, EPA conducted an EJSCREEN analysis of the community near the vicinity of the outfall. Of the 11 environmental indicators screened through EJSCREEN, the evaluation determined elevated indicator scores for PM 2.5, Ozone, NATA Cancer Risk, NATA Respiratory HI, Lead Paint Indicator, and Wastewater Discharge Indicator.

As a result of the analysis, EPA is aware of the potential for cumulative burden of the permitted discharge on the impacted community and will issue this permit in consideration of the impacted community and consistent with the CWA, which is protective of all designated uses of the receiving water, including human health.

**B. Impact to Threatened and Endangered Species**

Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536) requires federal agencies to ensure that any action authorized, funded, or carried out by the federal agency does not jeopardize the continued existence of a listed or candidate species, or result in the destruction or adverse modification of its habitat.

The website for the U.S. Fish and Wildlife Service's (USFWS) Arizona Ecological Services Field Office generated an official species list on April 7, 2021. Additionally, the White Mountain Apache Tribe Game and Fish Department provided a species list on June 21, 2021. These two lists identify the following threatened (T), endangered (E), and tribally sensitive (TS) species and their critical habitat that may occur in the vicinity of the White River.

To determine whether the discharge would affect any endangered, threatened, or tribally sensitive species, EPA reviewed a list of 15 species associated with habitats in Navajo County and coordinated with the Tribe's Wildlife and Outdoor Recreation Division. Based on this review, ten species may occur within the action area.

Status	Species/Listing Name	Critical Habitat
E	Southwestern Willow Flycatcher ( <i>Empidonax traillii extimus</i> )	No
E	New Mexico Meadow Jumping Mouse ( <i>Zapus hudsonius luteus</i> )	No
E	Mexican Wolf ( <i>Canis lupus baileyi</i> )	No
T	Narrow-headed Gartersnake ( <i>Thamnophis rufipunctatus</i> )	No
T	Mexican Spotted Owl ( <i>Strix occidentalis lucida</i> )	Yes <sup>(1)</sup>
T	Yellow-billed Cuckoo ( <i>Coccyzus americanus</i> )	Yes <sup>(2)</sup>
T	Northern Mexican Gartersnake ( <i>Thamnophis eques megalops</i> )	Yes <sup>(3)</sup>
T	Chiricahua Leopard Frog ( <i>Rana chiricahuensis</i> )	No
T	Apache Trout ( <i>Oncorhynchus apache</i> )	No
TS	Bald Eagle ( <i>Haliaeetus leucocephalus</i> )	No

- (1) Mexican spotted owl critical habitat has been designed east of the action area within Apache National Forest and northwest of the action area near Payson, AZ. This critical habitat is not located in the action area.
- (2) Yellow-billed cuckoo critical habitat has been designed south of the action area near Safford, AZ, and northwest of the action area near Payson, AZ. This critical habitat is not located in the action area.
- (3) Northern Mexican gartersnake critical habitat has been designed northwest of the action area near Payson, AZ. This critical habitat is not located in the action area.

The action area is defined as the Whiteriver Sewage Lagoons facility, the stretch of unnamed stream between Outfall 001 and where the unnamed stream meets White River, and White River until the confluence of White River and Black River to form Salt River. The action area does not include the Salt River, as the discharge from the facility is limited and the treated effluent is heavily diluted when White River combines with Black River to form Salt River and will have no discernible effect on Salt River. The proposed permit contains limits to protect the designated uses of the receiving water, including warmwater habitat and wildlife, and does not involve physical habitat alteration or change in flow.

The following ESA effects discussion does not include the monarch butterfly (*Danaus plexippus*) or Arizona toad (*Anaxyrus microscaphus*), as these are both candidate species. Candidate species do not have statutory protection under the ESA although FWS encourages cooperative conservation efforts for these species.

### **Southwestern Willow Flycatcher (*Empidonax traillii extimus*)**

The southwestern willow flycatcher is typically found in dense cottonwood and willow along streams, river, and wetlands. Arizona is part of the historic range of this species. There have been reported but unverified sightings of this species along the White River, which is the receiving

water. No pairing or nesting activity has been verified by the WMAT Game and Fish Department.

Based on best available information provided by the WMAT Game and Fish Department, this species does not occur within the action area. Thus, EPA has determined that the action will not affect the southwestern willow flycatcher.

#### **New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*)**

The New Mexico meadow jumping mouse is typically found in dense riparian/wetland vegetation near perennial moving water up to an elevation of 8,000 feet. This species is semi-aquatic, as they can use their hind feet for swimming. New Mexico jumping mice use microhabitats of dense sedges on moist soil along the edges of perennial water, and foraging territories may extend up to 300 feet along stream banks. This species nests in dry soils near foraging habitat, and individuals eat grasses, forbs, fruits, insects, snails, slugs, and millipedes. New Mexico meadow jumping mice are not found in meadows or grasslands without perennial water and riparian food sources.

Recent checks for potential preferred habitat and observational surveys in the action area conducted by WMAT Fish and Game Department have been negative. Based on best available information, this species does not occur within the action area. Thus, EPA has determined that the action will not affect this species.

#### **Mexican Gray Wolf (*Canis lupus baileyi*)**

Mexican wolves are an endangered subspecies of gray wolf found in the Southwestern United States. A non-essential, experimental population of Mexican Gray wolves exists on Tribal lands. According to federal regulations (50 C.F.R. 17.83(a)), a listed species determined not to be essential to the survival of that species and not occurring within the National Park System or National Wildlife Refuge System shall be treated as a species proposed to be listed under the ESA as a threatened species. EPA is required to confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species. (50 C.F.R. 402.10(a)). Therefore, EPA is required to confer with FWS on any action which is likely to jeopardize the continued existence of the Mexican Gray Wolf.

Wolves were released off-Reservation in March of 1998 and were first documented on the Reservation in June of the same year. They have since been allowed by the Tribe to establish home range territories on the Reservation. Mexican wolves are managed under the White Mountain Apache Tribe-Mexican Wolf Management Plan and a Cooperative Agreement with USFWS.

Habitat for this species is primarily associated with forested mountainous terrain generally occurring above 4,500 ft. in elevation in or near woodlands of pine, oak or pinyon-juniper, interspersed with grasslands. Based on this information, the non-essential, experimental population of Mexican wolves may occur in the action area near the White River.

Mexican gray wolves could be exposed to the treated effluent directly through drinking water from the receiving waters. Effects from ingestion of the treated effluent are expected to be minimal, as the treated effluent does not show levels of toxic pollutants that would be toxic to

large animals such as wolves. Due to the unlikelihood of exposure, and minimal effects expected if exposure were to occur, EPA has determined that the action will not jeopardize the continued existence of the Mexican gray wolf.

**Narrow-headed Gartersnake (*Thamnophis rufipunctatus*)**

Narrow-headed gartersnakes are typically found in or near clear cool perennial streams near evergreen and broadleaf deciduous trees at elevations from 2,200 to 8,000 feet. Narrow-headed gartersnakes are almost strictly aquatic, as they are typically seen in the water or on the bank within 3-4ft of the stream. Individuals feed on native and non-native fish, as well as frogs, toads, and tadpoles. Narrow-headed gartersnakes often shelter under rocks or in a stream, and hibernate from October/November to March in rocky outcrops, rocky slopes, and rock piles.

There have been no sightings of the narrow-headed gartersnake in the action area during surveys conducted by WMAT Fish and Game Department. Based on best available information, this species does not occur within the action area. Thus, EPA has determined that the action will not affect this species.

**Mexican Spotted Owl (*Strix occidentalis lucida*)**

Mexican spotted owls are territorial, and are typically found in old-growth forests with over 40 percent canopy cover near some type of water source. Mexican spotted owls feed mainly on mammals, but may also eat birds, bats, reptiles, and arthropods. The two activities that significantly impact spotted owls are the removal or opening of old-growth forests that results in forest fragmentation and human activity that may cause owls to abandon a foraging, nesting, or roosting area.

Based on information from White Mountain Apache Game and Fish Department, there are no Mexican spotted owl territories within the action area and there is no preferred habitat for Mexican spotted owls within the action area. Based on best available information, this species does not occur within the action area. Thus, EPA has determined that the action will not affect this species.

**Yellow-billed Cuckoo (*Coccyzus americanus*)**

The yellow-billed cuckoo is a migratory bird species that breeds in the United States and is known to occur in Arizona. Yellow-billed cuckoo habitat is characterized by dense vegetation with water nearby (e.g. dense thickets along a stream). In the western United States, nests are often established in willows along streams and rivers. Yellow-billed cuckoos feed on insects, fruits, reptiles, and amphibians. The main cause of decline for this species is habitat destruction due to riparian areas being converted to farmland.

In recent surveys conducted by WMAT Game and Fish Department, there have been no sightings of the yellow-billed cuckoo in the action area. Based on best available information, this species does not occur within the action area. Thus, EPA has determined that the action will not affect this species.

**Northern Mexican Gartersnake (*Thamnophis eques megalops*)**

Northern Mexican gartersnakes occur in riparian environments including river habitats and stock tanks. They feed primarily on native fish and leopard frogs. They may also eat earthworms, leeches, lizards, rodents, and various amphibians.

Northern Mexican gartersnakes have only been documented historically on the far southeastern area of the White Mountain Apache Reservation in surveys conducted by the WMAT Game and Fish Department. Thus, based on best available information, this species does not occur within the action area. EPA has determined that the action will not affect this species.

### **Chiricahua Leopard Frog (*Rana chiricahuensis*)**

Chiricahua leopard frogs occur in perennial waters such as ponds, tanks, wet meadows, and small streams, typically between 3,000 and 9,000 feet of elevation. They are currently restricted to springs, livestock tanks, and streams in the upper portion of watersheds with minimal nonnative predators. Adult frogs eat invertebrates, fish, and amphibians. Tadpoles primarily eat small food such as vegetative matter, small diatoms, and bacteria. Chiricahua leopard frogs are vulnerable to predation and competition by nonnative species. Additionally, individuals are negatively affected by Chytridiomycota skin fungi and eggs may be negatively affected by stream sedimentation.

No Chiricahua leopard frogs have been seen during observational surveys within the action area conducted by WMAT Game and Fish Department, and it is highly unlikely this species occurs within the action area due to the introduction of bullfrogs, non-native trout, and crayfish into waters in close proximity to the discharge. Based on best available information, this species does not occur within the action area. Thus, EPA has determined that the action will not affect this species. EPA has determined that the action will not affect the Chiricahua leopard frog.

### **Apache Trout (*Oncorhynchus apache*)**

The Apache trout is a species of trout that inhabit cold water streams in the White Mountains, typically above 8000 feet in elevation. Individuals typically inhabit pools and streams, and feed on aquatic and terrestrial insects and other invertebrates. White River is a warm river below 8000 feet in elevation, has a designated use of warmwater habitat, and does not have a designated use of coldwater habitat. This species may intermittently occur due to up-river stocking for "put and take" fishing, but because of the higher water temperatures the river does not provide suitable habitat and the species is highly unlikely to persist regardless of the presence of the permitted effluent; thus EPA has determined that the action will not affect the Apache trout.

### **Bald Eagle (*Haliaeetus leucocephalus*)**

Bald eagles are no longer listed as threatened or endangered under the ESA. Bald eagles are identified as a tribally sensitive species and actions on the White Mountain Apache Reservation that may affect bald eagles may affect tribal interests. It is EPA's policy to coordinate with tribes and to consult on a government-to-government basis when EPA actions and decisions may affect tribal interests. EPA has coordinated with the White Mountain Apache Game and Fish Department to evaluate potential effects of the permit on bald eagles.

The White Mountain Apache Reservation is within the wintering range of the bald eagle with a small resident and nesting population within the Salt River Canyon and other tributaries. Bald eagle populations on the reservation are highly variable depending upon the severity of the winter season and availability of prey. The bald eagle has a large territory range with most feeding associated with foraging near lakes, streams, and ponds. Some foraging of carrion is also observed away from water sources.

The Wildlife and Outdoor Recreation Division has concluded that the permit is highly unlikely to cause adverse effects to bald eagles and has not requested any revisions for protection of bald eagles.

### **Conclusion**

EPA has determined reissuance of the NPDES permit for Whiteriver Sewage Lagoons will not affect the southwestern willow flycatcher, Mexican spotted owl, Apache trout, bald eagle, New Mexico meadow jumping mouse, narrow-headed gartersnake, yellow-billed cuckoo, norther Mexican gartersnake, or Chiricahua leopard frog. EPA has determined reissuance of the NPDES permit for the Whiteriver Sewage Lagoons will not jeopardize the continued existence of the Mexican gray wolf. EPA has determined reissuance of the NPDES permit for the Whiteriver Sewage Lagoons will not affect critical habitat for the Mexican spotted owl, yellow-billed cuckoo, or northern Mexican gartersnake because there is no critical habitat within the WMAT reservation.

EPA will provide USFWS with copies of the draft fact sheet and the draft permit during the public notice period.

### **C. Impact to Coastal Zones**

The Coastal Zone Management Act (CZMA) requires that Federal activities and licenses, including Federally permitted activities, must be consistent with an approved state Coastal Management Plan (CZMA §§ 307(c)(1) through (3)). Section 307(c) of the CZMA and implementing regulations at 40 CFR § 930 prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the activity complies with the State (or Territory) Coastal Zone Management program, and the State (or Territory) or its designated agency concurs with the certification.

The permit does not affect land or water use in the coastal zone.

### **D. Impact to Essential Fish Habitat**

The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act (MSA) set forth a number of new mandates for the National Marine Fisheries Service, regional fishery management councils and other federal agencies to identify and protect important marine and anadromous fish species and habitat. The MSA requires Federal agencies to make a determination on Federal actions that may adversely impact Essential Fish Habitat (EFH).

The permit contains technology-based effluent limits and numerical and narrative water quality-based effluent limits as necessary for the protection of applicable aquatic life uses. The permit does not directly discharge to areas of essential fish habitat. Therefore, EPA has determined that the permit will not adversely affect essential fish habitat.

**E. Impact to National Historic Properties**

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effect of their undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. Pursuant to the NHPA and 36 CFR § 800.3(a)(1), EPA is making a determination that issuing this NPDES permit does not have the potential to affect any historic properties or cultural properties. As a result, Section 106 does not require EPA to undertake additional consulting on this permit issuance.

**F. Water Quality Certification Requirements (40 CFR §§ 124.53 and 124.54)**

For States, Territories, or Tribes with EPA approved water quality standards, on August 24, 2021, EPA requested certification from the White Mountain Apache Tribe that the permit will meet all applicable water quality standards. Certification under section 401 of the CWA shall be in writing and shall include the conditions necessary to assure compliance with referenced applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of the CWA and appropriate requirements of Territory law. EPA cannot issue the permit until the White Mountain Apache Tribe has granted certification under 40 CFR § 124.53 or waived its right to certify. If the White Mountain Apache Tribes does not respond within 60 days of August 24, 2021, it will be deemed to have waived certification.

**XI. STANDARD CONDITIONS****A. Reopener Provision**

In accordance with 40 CFR §§ 122 and 124, this permit may be modified by EPA to include effluent limits, monitoring, or other conditions to implement new regulations, including EPA-approved water quality standards; or to address new information indicating the presence of effluent toxicity or the reasonable potential for the discharge to cause or contribute to exceedances of water quality standards.

**B. Standard Provisions**

The permit requires the permittee to comply with EPA Region IX Standard Federal NPDES Permit Conditions.

**XII. ADMINISTRATIVE INFORMATION****A. Public Notice (40 CFR § 124.10)**

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

**B. Public Comment Period (40 CFR § 124.10)**

Notice of the draft permit will be placed on the EPA website, with a minimum of 30 days provided for interested parties to respond in writing to EPA. The draft permit and fact sheet will be posted on the EPA website for the duration of the public comment period. After the closing of

the public comment period, EPA is required to respond to all significant comments at the time a final permit decision is reached or at the same time a final permit is actually issued.

### **C. Public Hearing** (40 CFR § 124.12)

A public hearing may be requested in writing by any interested party. The request should state the nature of the issues proposed to be raised during the hearing. A public hearing will be held if EPA determines there is a significant amount of interest expressed during the 30-day public comment period or when it is necessary to clarify the issues involved in the permit decision.

## **XIII. CONTACT INFORMATION**

Comments, submittals, and additional information relating to this proposal may be directed to:

Sunny Elliott, (415) 972-3840  
Elliott.Sunny@epa.gov

EPA Region IX  
75 Hawthorne Street (WTR 2-3)  
San Francisco, California 94105

## **XIV. REFERENCES**

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