

EPA Response to Comments Received During Public Notice of the Preliminary Finding of No Significant Impact (FONSI) for the Final Environmental Assessment for Maher Cattle Company, LLC

Comment	Response (see detailed responses below the table)
<p>Running Antelope Local District Chairperson Comments:</p> <p>“[writing to] express formal opposition to the FONSI regarding Maher Cattle, LLC permit. I would like to express deep concern about the environmental and health impacts discharge from the CAFO will have on High Bank Creek, the Grand River and our community directly downstream of Maher Cattle Company LLC. I request that EPA visit with the community, prior to issuing any findings or permit, to see how the potential for adverse environmental and health outcomes that frequently accompany concentrated animal feeding operations.</p> <p>“This community aims to address environmental justice concerns and want the EPA to address our community concerns. Communities of color that are disproportionately affected by industrial agricultural practices. This community uses the Grand River and High Bank Creek for recreation, pick berries, fishing and traditional cultural practices. The fish are not edible they have mutation and other physical health effects on them. Subjecting our members exposed to emissions of excess nutrients and toxicants distributed into the water system in unacceptable. Our members have developed physical health effects of blotches and sores after swimming in the river.</p> <p>“We believe the EPA must take a more in depth assessment of these risks by conducting an Environmental Impact Statement. We request that the EPA conduct an on-site visit to the Running Antelope District for a consultation before issuing a permit. It is vital that the EPA visit the district to see firsthand</p>	<p>See EPA Response 1. Common causes of turbidity, foam on surface waters, fish sores, other impacts to aquatic species, and sores from swimming</p> <p>See EPA Response 2. Culturally significant plant and animal species and impacts to vegetation (e.g., berries)</p> <p>See EPA Response 6. National Environmental Policy Act (NEPA) adequacy of analysis and whether a finding of No Significant Impact (FONSI) should be issued</p> <p>See EPA Response 9. Tribal consultation, NHPA consultation, and request for meeting with Running Antelope Local District</p>

<p>how this CAFO threatens our public health and our right to clean water and environment.”</p>	
<p>Chairman Sitting Bear Comments:</p> <p>“The FONSI should not be finalized, and instead EPA should prepare an environmental impact statement prior to issuance of an NPDES Permit to Maher Cattle Co.”</p>	<p>See EPA Response 6. NEPA adequacy of analysis and whether a FONSI should be issued</p>
<p>Chairman Sitting Bear Comments:</p> <p>“[The Chairman’s] comments...on the draft environmental assessment...noted that any meaningful evaluation of a permit’s impacts requires inquiry into the historical context of the environmental impacts of the affected community. Section 102 of [NEPA] requires EPA to ‘utilize a systematic, interdisciplinary approach which will ensure the integrated use of natural and social sciences... Accordingly, I requested that EPA take note that the Tribal communities downstream from the Maher livestock operation include many families that are descendants of the victims of the Wounded Knee massacre. This affects our perspective on the impacts of federal permits and projects that may impact our Reservation environment and which get issued without our consent.</p> <p>“EPA has ignored that request. Rather than acknowledge the violent racism our people have suffered, and the historical impacts of the Maher permit, in the Final Environmental Assessment, EPA took an argumentative approach and ignored our very real historical trauma. By ignoring the historical and cultural context in which the affected Tribal communities experience the impacts of discharge from Maher Cattle, EPA has failed to properly evaluate the environmental impacts of the proposed NPDES permit.”</p>	<p>See EPA Response 6. NEPA adequacy of analysis and whether a FONSI should be issued</p> <p>See EPA Response 7. Consideration of cumulative impacts</p>

Chairman Sitting Bear Comments:

“The FONSI is not supported by adequate data or analysis in the Final EA.”

“The Final Environmental Assessment does not support the FONSI. There is little actual data or analysis. In fact, the only data presented in the Final EA shows that Maher’s operation has already had a significant adverse impact on the Reservation environment. See Final EA, section 3.2.1. ‘If any ‘significant’ environmental impacts might result from the proposed agency action, then an EIS must be prepared before the agency action is taken.’ *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983).

“An environmental assessment, although a more concise document than an EIS, must take request ‘hard look’ at the environmental consequences of the proposed action. *Sierra Club v. Antwerp*, 661 F.3d 1147, 1154 (D.C. Cir. 2011). The FONSI is based upon an environmental assessment that assumes that the issuance of an NPDES permit will be protective of the environment, but which failed to take a hard look at the environmental impacts. The EPA catalogued data from the applicant’s prior Clean Water Act violations, but did not take any look (much less a ‘hard look’) at the environmental impacts of the permit, at all.

“EPA wrote in section 4.2.1 (which is repeated throughout section 4): The issuance of an NPDES permit for the Facility would likely improve water quality in High Bank Creek by limiting the discharge of wastewater from the production area to occur only during a 24-hour 25-year storm event; requiring setbacks and other safeguards for the production areas... and developing a nutrient management plan for land application. Final EA, p. 32.

“EPA acknowledges significant discharge and Clean Water Act violations by the applicant in the recent past. First, the agency cannot take credit for future

See EPA Response 4. Environmental impacts of non-compliance

See EPA Response 5. Effect of an NPDES permit

See EPA Response 6. NEPA adequacy of analysis and whether a FONSI should be issued

See EPA Response 8. Disclosure of information to the public

water quality improvements by assuming future compliance. In fact, the Standing Rock Sioux Tribe has notified EPA of other violations of federal and Tribal grazing and leasing laws and regulations by the applicant, but in the Final EPA fails to acknowledge this history of legal violations. In the Final EA, EPA treats compliance with the NPDES permit as a foregone conclusion. That is belied by the reality on the ground, with respect to both the prior violations of the Clean Water Act, and the ongoing violations of federal and Tribal grazing and leasing violations by Maher Cattle Co.

“Second, EPA admits in the Final EA that the requisite setbacks and other requirements in the production are governed by the CAFO regulations: ‘This type of cattle access to streams would not be permitted by CAFO regulations regardless of whether a facility has a CAFO permit.’ Final EA, p. 31. This undermines the rationale for issuance of an NPDES permit based upon the FONSI.

“Third, the nutrient management plan relied upon by EPA has not been disclosed to the public. EPA cannot base a FONSI on undisclosed future plans. Ultimately, EPA’s rationale for the FONSI is more an expression of hope that there will be no significant environmental effect, than an analysis demonstrating no significant effect. EPA is entitled to no deference for ‘conclusory or unsupported suppositions.’ *United Techs Corp. v. Dep’t of Def.*, 601 F.3d. 557, 562 (D.C. Cir. 2010). Data and analysis supporting EPA’s findings are required, but the Final EA is devoid of such information.

“In the Final EA, EPA’s position appears to be ‘issuance of an NPDES permit is better than if there is no permit.’ That may be true, but the environmental assessment must nevertheless evaluate the environmental impacts of the NPDES permit on the public health and the environment on the Standing Rock Reservation. It fails to do so, and consequently the [FONSI] arguably violates NEPA...and the Administrative Procedures Act, 5 U.S.C. § 706(2)(A).”

<p>Chairman Sitting Bear Comments:</p> <p>“Fish and Wildlife”</p> <p>“Historically, the Hunkpapa are known as one of the ‘hunting bands’ of Lakota. The Tribe enjoys hunting and fishing rights within its Reservation (including Tribal and allotted lands immediately adjacent to the project area), see e.g. <i>New Mexico v. Mescalero Apache Tribe</i>, 462 U.S. 324 (1983), as well as Off-Reservation rights within the 1851 Fort Laramie treaty boundaries. See <i>Herrera v. Wyoming</i> 587 U.S. 329, 332 (2019). Thus, when an agency prepares an environmental document under NEPA to determine the impacts of a federal permit on the Standing Rock Reservation, the agency is required to determine the effects on the Tribe’s Treaty hunting and fishing rights. <i>Standing Rock Sioux Tribe v. U.S. Army Corps of Engr’s</i>, 255 F. Supp.3d 101, 133-134 (D.D.C. 2017). When it fails to do so, preparation of an environmental impact statement is required. <i>Standing Rock Sioux Tribe v. U.S. Army Corps of Engr’s</i>, 440 F. Supp.3d 1 (D.D.C. 2020), <i>aff’d Standing Rock Sioux Tribe v. U.S. Army Corps of Engr’s</i>, 985 F.3d 1032 (D.C. Cir. 2021).</p> <p>“Rather than address the potential impacts to the Tribe’s hunting and fishing rights from permitted discharge, in section 3.6 of the Final EA (footnotes 1-5), EPA engaged in a superfluous, patronizing and generally inaccurate discourse on Standing Rock’s Treaty rights and the longstanding dispute over the Black Hills. The suggestion that EPA need not evaluate the impacts to our usufructory rights from the permitted discharge because the members of the Stading Rock Sioux Tribe lack hunting, fishing and gathering rights on our own property, recognized by the United States by Treaty and occupied by our Tribe today, is termination-like thinking.</p>	<p>See EPA Response 6. NEPA adequacy of analysis and whether a FONSI should be issued</p> <p>See EPA Response 11. Tribal treaty rights</p>
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<p>“Ultimately, EPA failed to accurately evaluate the potential impact to Standing Rock’s Treaty right to hunt and fish on our own land and our own Reservation. The FONSI is fatally flawed, and far more analysis is required in order for EPA to issue a valid NPDES permit to Maher.”</p>	
<p>Chairman Sitting Bear Comments:</p> <p>“Riparian Vegetation”</p> <p>“The Final EA fails to adequately evaluate the environmental impacts of the proposed permit on High Bank Creek riparian vegetation the Tribe notified EPA of its concerns with the impact of the permitted discharge on riparian vegetation along High Bank Creek, including cottonwoods and other species used for ceremonial or other cultural uses, or foods or medicines. Typical of the EPA’s failure to take the Tribe’s concerns seriously are the following passages in the Final EA:</p> <p>“The EPA reached out to the Standing Rock Sioux Tribe THPO for information on culturally sensitive plan an animal species. No information has been provided on these topics (Final EA, p. 7)</p> <p>“The EPA gathered information from the Tribe on this topic through conversations with leaders of the Tribe’s Environmental Program and Department of Water Resources...a letter sent to EPA by the Tribe’s Chairwoman, and conversations and emails exchange with Dr. Mike Gutzmer, Tribal biologist. (Final EA, p. 25).</p> <p>“The lack of coherence leads one to question the sufficiency of any analysis. EPA states, ‘sources could not provide precise locations for these species due to the sensitive nature of this privately held information.’ (Final EA, p. 25). It is simply not that difficult, for example, to identify cottonwood or willow stands</p>	<p>See EPA Response 2. Culturally significant plant and animal species and impacts to vegetation (e.g., berries)</p> <p>See EPA Response 9. Tribal consultation, NHPA consultation, and request for meeting with Running Antelope Local District</p>

<p>along High Bank Creek on the Standing Rock Reservation. However, there is not analysis of the spatial or temporal impacts of permitted discharge on cottonwoods or other identified riparian plant species.</p> <p>“Overall, there is no analysis. That is the main deficiency in the Final EA, and why the FONSI should not be finalized, but an EIS prepared to thoroughly evaluate the impacts of discharge from Maher on riparian plant species of importance to the Tribe.”</p>	
<p>Chairman Sitting Bear Comments:</p> <p>“Affected Tribal Population”</p> <p>The Final EA does not support the proposed FONSI because it fails to identify the Tribal; population whose health could be impacted by the contaminants from discharge by Maher. Under NEPA, ‘it is the continuing responsibility of the Federal Government to ... assure for all Americans safe, healthful, productive and esthetically an culturally pleasing surrounds.’ 42 U.S.C. § 4231(b)(2)... EPA has a statutory obligation to make efforts to evaluate the vulnerabilities and attendant health impacts to Tribal members. It failed to comply with that duty.</p> <p>“In response to Standing Rock’s comment that Tribal members are especially vulnerable to E. coli contamination due to pre-existing health baselines, in Appendix E, EPA cited South Dakota Department of Health statistics, which does not survey or include Tribal members. The Centers for Disease Control and Prevention or Indian Health Service statistics on Tribal health are far more accurate than South Dakota’s figures. EPA looked at the data applicable to non-Indians and ignored data related to Tribal members.</p> <p>“The summary dismissal of authoritative, peer reviewed studies cited by our Tribe demonstrating health impacts adjacent to and downstream from</p>	<p>See EPA Response 6. NEPA adequacy of analysis and whether a FONSI should be issued</p> <p>See EPA Response 3. Impacts of discharges on wells on Indian-owned land</p> <p>See EPA Response 7. Consideration of cumulative impacts</p>

feedlots is inadequate under NEPA and the APA. Crying ‘bias’ without providing a cogent explanation does not suffice. The cited report a robust study using modern methods published in 2025 by Yale University authors, that examined CAFO operations across three states, North Carolina, Pennsylvania, and Virginia, giving it wide geographic relevance. The Final EPA mistakenly misinterprets the statistical findings as ‘essentially no difference’ in health outcomes between communities with or without CAFO exposure.

“In fact, EPA correctly notes that the evidence is a ‘positive association’ but calls it ‘weak’. A statistically significant positive association is not ‘essentially no difference.’ Calling it ‘essentially no difference’ lacks any method or statistical justification – it is an example of the pattern throughout the EA to dismiss evidence as ‘zero’ risk, **without any evidence or basis**. [Bold in original comments.]

“Moreover, the statistical significance of the risk, 1.028 (which the EA calls ‘essentially 1’ without basis) is the value from the North Carolina data. The EU [EA?] fails to mention the greater risk estimates of 1.039 in Pennsylvania and 1.053 in Virginia. All these risk estimate as statistically significant at a 95% confidence level. In plain language, the study reports that it is 95% confident that a person with CAFO exposure is between 2.8% (North Carolina data) and 5.3% (Virginia data) more likely to die from cerebrovascular disease than people without CAFO exposure. In fact, it may be even higher if one considers that the data is 95% confident that the true risk of dying from the CAFO-associated cerebrovascular disease may be as high as the upper confidence limit of 4.2% (NC data), 5.3% (PA data), and 7.5% (VA data). The EA misinterprets the statistical analysis of the study, mis-classifies a statistically significant risk as ‘essentially 1’ without providing any mathematical or other basis for diminishing the risk evidence.

“EPA’s response lists as ‘significant limitations and is prone to bias’ the inability to control for other causes of disease and death, complications from smoking or other chronic illnesses, and lack of exposure assessment (see EA, Appendix E, p. 41). All of these things in epidemiology studies are known as potentially leading to biased estimates towards the null (underestimating the true risk) due to non-differential misclassification. The bias occurs because the exposed and unexposed groups appear more similar than they really are, which results in an underestimation of the association between the exposure (CAFOs in this case) and the outcome (disease or death). For example, smoking is also a cause of cerebrovascular disease, but it will only bias the results if there are significantly more smokers in the CAFO-exposed group than the unexposed group, driving up the disease cases in the CAFO-exposed group than the unexposed group, driving up the disease cases in the CAFO-exposed group; in reality the smokers are likely to be randomly distributed across people living near or far from CAFOs, making it harder to tease out the cardiovascular disease cases attributable to CAFOs. Similarly, uncertainty or lack of individual exposure values is a known source of underestimation of risk (Spiegelman D. Approaches to uncertainty in exposure assessment in environmental epidemiology. *Annu Rev Public Health*. 2010; 31:149-63. <https://pmc.ncbi.nlm.nih.gov/articles/PMC4035123/>).

“Many prominent statisticians have raised concerns with over-reliance on statistical significance to disregard evidence of harm, instead recommending that statisticians address uncertainty rather than dismiss it. Importantly, when feasible, the uncertainty on the magnitude and direction of the effect should be documented - whether the absence of information is more likely to over-estimate or under-estimate harm (Chartres N, Sass JB, Gee D, Balan SA, Birnbaum L, Coglianò VJ, Cooper C, Fedinick KP, Harrison RM, Kolossa-Gehring M, Mandrioli D, Mitchell MA, Norris SL, Portier CJ, Straif K, Vermeire T. Conducting evaluations of evidence that are transparent, timely and can lead

to health-protective actions. Environ Health. 2022 Dec 5; 21(1):123.
<https://pmc.ncbi.nlm.nih.gov/articles/PMC9720912/#CR104>).

“EPA suggests in Appendix E (p. 41) that the two studies were dismissed because the studies are from occupational exposure from working at swine CAFO facilities, and Maher is a cattle operation with concerns to the community. However, as above, extending a worker study to community exposures will likely underestimate the true risks. This is because workers are by definition people that are adults and healthy enough to work. Moreover, workers are often provided with information and equipment that provide a measure of protection from harmful exposures. In contrast, the surrounding community includes elders, pregnant women and children, and people with disease complications such as diabetes - as emphasized in our comments. This is so well-established in epidemiology that it has a name, the ‘healthy work effect’.

“A worker study may not be a perfect match for evaluating community impacts, but if anything it should be considered an underprediction of risks to the general population, and at the very least, a significant red flag for concerns. And, as for swine studies being a proxy for risks from cattle operations, the issue is toxic E. coli dust and emissions, which a factor of the feces, common to all CAFO operations. The EA response does not provide any documentation to support dismissing documented health risks from CAFO dust and emission – lacking any fact-based rationale, the reasonable presumption is that CAFO dust is unhealthy.

In Appendix E (p. 41), EPA briefly discusses the Tribe’s concerns that animal transport will spread E. coli. The EA response notes that there is significantly greater number of reported cases of E. coli in the county where the Maher CAFO operation is located, compared with no cases in the nearby county. This is alarming! Rather than impose measures to prevent CAFO-associated E. coli

risk, the EA simply says that they do not have information on the causes or exposure pathways – sticking to its pattern of treating uncertainty as ‘zero’ risk. The EA cites as support for its dismissal of this startling elevated case report a study on the general known routes of exposure for E. coli, willfully ignoring the obvious source – a CAFO. In fact, the paper cited by the EA - Stein and Katz, 2017 – was written with the understanding that cattle operations result in E.coli dispersion, with ‘implications for human health’ (Richard A. Stein, David E. Katz, Escherichia coli, cattle and the propagation of disease, FEMS Microbiology Letters, Volume 364, Issue 6, March 2017, <https://academic.oup.com/femsle/article/364/6/fnx050/3059138>). The EU [EA?] mis-uses the article to dismiss concerns, when in reality the study provides some basis for the elevated case reports of E. coli in the vicinity of the Maher CAFO operation, and strengthens the Tribe’s concerns that the CAFO is increasing E. coli risks.

“EPA claims it possesses discretion to determine a narrow spatial limit to environmental impacts under NEPA, pursuant to Seven County Infrastructure Coal. V. Eagle Cnty, 605 U.S. 168 (2025). That discretion must be exercised consistent with the EPA Policy on Consultation with Indian Tribes... The policy requires that ‘information obtained from Tribes be given meaningful consideration and EPA should strive for consensus or mutually desired outcome.’ (p. 3)

“EPA has not striven to address Standing Rock’s concerns with public health – it ignored them and alleged ‘bias’ without any basis. Significantly, the sentence in the draft EA detailing that ‘Tribal members have voiced concerns about nuisance odor issues around McLaughlin SD,’ has been omitted.

“EPA’s refusal to determine the cumulative impact of low flows in the Grand River with discharge from Maher mis-states the spatial scope, which is the confluence of High Bank Creek and the Grand River, not the location of

<p>Shadehill Dam itself. Shadehill’s effect is located at downstream on the Reservation, including the mouth of High Bank Creek, where dilution capacity is diminished significantly.</p> <p>“EPA’s argument that there will be no downstream impacts because discharge will only occur during high precipitation events constitutes another assumption that lacks data. Impacts to wells on Indian-owned land are determined by the hydrologic inter-relation between ground and surface water, not the surface elevation of wellheads. It is determined by the location of the water table and antecedent climate conditions. This is ignored by the EPA in the Final EA.</p> <p>“EPA attempts to justify ignoring Tribal health concerns by citing rescission of Executive Order 12898, but, as discussed above, NEPA itself demands protections for all Americans, not just non-Indians documented by the South Dakota Department of Health. If EPA changed the rules in the middle of this NEPA process, it must provide a rational explanation for doing so. No such explanation has been provided. Further data and analysis are required in an EIS. [bold and highlighted emphasis in original comment]</p>	
<p>Chairman Sitting Bear Comments:</p> <p>“Tribal Sovereignty and Opportunity to Participate”</p> <p>“The Tribe’s Treaties with the United States must be part and parcel of the analysis because it relates to the regulatory structure for Maher Cattle Co. The Treaties establish the Tribe as a sovereign nation. For example, Article 5 of the 1851 Treaty recognizes ‘the Sioux or Decotah Nation.’ (11 Stat. 749). As a nation, Standing Rock ‘possess(es) attributes of sovereignty over both their members and their territory.’ <i>United States v. Mazurie</i>, 419 U.S. 544, 557 (1975). The Maher Cattle Co. is within the Standing Rock Reservation and the</p>	<p>See EPA Response 8. Disclosure of information to the public</p> <p>See EPA Response 9. Tribal consultation, NHPA consultation, and request for meeting with Running Antelope Local District</p> <p>See EPA Response 12. Tribal sovereignty and opportunity to participate</p>

land is Indian Country within the definition of 18 U.S.C. § 1151. *Solem v. Bartlett*, 465 U.S. 463 (1984). Standing Rock has asserted jurisdiction over its territory in Article I of the Tribal Constitution...

“The *EPA Policy on Consultation with Indian Tribes* commits the agency to supporting Tribal sovereignty: ‘EPA recognizes and works directly with federally recognized Tribes as sovereign entities with primary authority and responsibility for each Tribe’s land and membership.’ That being the case, EPA must include a term in any NPDES permit that may be issued to Maher Cattle Co. must comply with all applicable Tribal laws.

“Tribal staff must have the reasonable right of entry for inspection, free from intimidation. Permit terms requiring Maher to take samples upon any discharge should be modified, so the Tribe conducts the sampling, paid for by Maher. Any permit should have a limited term, not longer than 10 years. Ultimately, the failure to address these issues demonstrates noncompliance with the EPA Tribal Consultation Policy and disrespect of the Tribe’s sovereignty.

“An EIS is needed to remedy EPA’s intentional efforts to limit Tribal participation. EPA published the Notice of Intent prior to Maher’s filing a completed application or an NPDES permit. That caused limited opportunity for the Tribe to review and comment on the environmental documents published in this matter. It inhibited EPA’s compliance with the consultation requirements. EPA penalized Standing Rock, the affected community, for its premature publication of the NOI. That must be remedied in a more thorough NEPA process.”

<p>Chairman Sitting Bear Comments:</p> <p>“National Historic Preservation Act”</p> <p>“The area of potential effects to historic properties was determined without Tribal consultation, and is far too limited. EPA failed to comply with the NHPA section 106 process, including consultation on the APE and the identification, evaluation of impacts and determination of effects.”</p>	<p>See EPA Response 9. Tribal consultation, NHPA consultation, and request for meeting with Running Antelope Local District</p>
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EPA Responses 1-12 to Comments Received During Public Notice of the Preliminary FONSI for the Final Environmental Assessment for Maher Cattle Company, LLC (Maher or Facility)

The following terms will be used in this document:

- “Final EA, Appendix E” means the Final EA, Appendix E: EPA Response to Comments Received During Public Notice of the Draft Environmental Assessment for Maher Cattle Company, LLC, and Response to Input Received During Tribal Consultation on the EA.
- “EPA Response [#]” refers to a numbered response in this document, which is a response to a comment received on the preliminary Finding of No Significant Impact (FONSI). This is distinct from “Final EA, Appendix E Response [#]”, which refers to a response in the Final EA, Appendix E.

EPA Response 1. Common causes of turbidity, foam on surface waters, fish sores, other impacts to aquatic species, and sores from swimming

Comments were received from Running Antelope Local District Chairperson Taken Alive about the Grand River and High Bank Creek uses, including recreation, picking berries, fishing, traditional cultural practices, and impacts to Tribal members’ health. This information about community uses of the Grand River and High Bank Creek is very generalized and lacks anecdotal specificity to time and place. Assuming the observations were made somewhere near the community of Running Antelope District, the EPA refers to its response to similar comments in the Final EA, Appendix E Response 13.

As documented in the Final EA, Appendix E Response 4, the Running Antelope District is located approximately 44 stream miles downstream from the Maher Facility. Any discharge from the Facility allowable under the Permit – i.e., one that meets the 25-year, 24-hour rainfall event threshold – is not likely to affect the water quality in High Bank Creek. With this separation from the Running Antelope District, pollutants in the discharge would be naturally attenuated in the dynamic water column after traveling such a long distance and further diluted by the Grand River. In the event that pollutants are discharged during a 25-year, 24-hour rainfall event, they would pose an insignificant water quality concern, as water travels a long distance along High Bank Creek from the Facility to the Running Antelope District, undergoing considerable instream dilution and attenuation from the large storm event.

As documented in the Final EA, Appendix E Response 13, fish sores are commonly caused by bacterial and fungal infections in fish, heavy metals, petroleum hydrocarbons, pesticides, and high levels of ammonia. Among these pollutants, only ammonia is likely to be present at Maher because of the nature of the Facility as a CAFO. An NPDES permit would require controls on discharges of pollutants significantly limiting such discharges. Without a permit, these discharges would be uncontrolled and likely occur at higher frequency and concentrations.

Bacterial infections can cause sores on skin from swimming. The EPA has published recommended water quality criteria to protect human health under Section 304(a) of the Clean Water Act. This includes criteria to protect swimming in surface waters. The EPA reviewed this list of criteria and of the listed criteria, the EPA identified *E. coli* as the bacterial pollutant common at CAFOs. An NPDES permit would require controls on discharges of pollutants significantly limiting discharges of *E. coli*. This includes controlling these pollutants through a permit requirement to develop and implement the nutrient management plan (NMP) included as an appendix to the permit for land application and requirements to contain runoff from the production area except in rare, large storm events. Without a permit, these discharges would likely occur at higher frequency and concentration. See the Final EA, Appendix E Responses 4 and 13 for more details.

More information on culturally significant plant and animal species is provided in EPA Response 2, and more information on health impacts is provided in EPA Response 6.

The EPA's review and consideration of these comments did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 2. Culturally significant plant and animal species and impacts to vegetation (e.g., berries)

A comment from Chairman Sitting Bear argued the Final EA failed to adequately evaluate the environmental impacts of the permit on High Bank Creek riparian vegetation, including cottonwoods and other species used for ceremonial or other cultural uses, or foods or medicines. The comment further indicated the Tribe notified the EPA of its concerns with such impacts. A comment from Running Antelope Local District Chairperson Taken Alive also raised concerns with impacts to cultural practices and berries.

The EPA addressed similar comments in the Final EA, Appendix E, Responses 7 and 13. As explained in those responses, vegetation growth and fruit production can be impacted by a variety of reasons. These could include climate (precipitation and temperature), disease, and insects. These causes are not impacted by Maher or the NPDES permit. One comment on the Draft EA and draft NPDES permit indicated they believe high nitrate is affecting berry production. Nitrates and other pollutants can impact vegetation and fruit production. As discussed in the Final EA, Appendix E Responses 1, 2, 3, and 4, an NPDES permit would require controls on discharges of pollutants significantly limiting such discharges. Without a permit, these discharges would be uncontrolled and likely occur at higher frequency and concentrations. This includes discharges of some nitrates and other pollutants. Furthermore, the NPDES permit requires surface water monitoring in High Bank Creek upstream of the Maher production area, adjacent to the production area, and downstream from the production area for nitrate. This will allow the EPA to know whether the production area is contributing nitrate to High Bank Creek and inform whether to require additional controls, if necessary.

In the Final EA, section 4.3.5 - Culturally significant plant and animal species, the EPA assesses impacts of the three alternatives on culturally significant plant and animal species; see below for a copy of that language. As also explained in the assessment of water resources in section 4.2.1 of the EA, discharges from the Facility would be permissible only in the extreme precipitation scenario of a 25-year, 24-hour event, in which case any damage to vegetation along drainageways would be driven by high flow and velocity of water in High Bank Creek and the Grand River, as predominantly influenced by runoff from elsewhere in the watershed.

The EPA's review and consideration of these comments did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 3. Impacts of discharges on wells on Indian-owned land

A comment from Chairman Sitting Bear indicated the EPA's assessment that there would be no downstream impacts to drinking water wells ignored that impacts are determined by the location of the water table, as well as antecedent climate conditions.

The EPA clarifies its statement on page 33 of the Final EA, Appendix E Response 4. An evaluation of impacts on drinking water wells requires hydrologic information about not only the creek, but also the wells themselves. This hydrologic data includes the location of the water table, head pressure and gradient, etc., which is also understood to be location dependent. The EPA conducted online searches for hydrologic data for High Bank Creek, including searching online search engines (Google, Bing, Yahoo, and Duck Duck Go) and the websites for the United States Geological Survey - Dakota Water Science Center¹ and the South Dakota Geological Survey² and was unable to identify any specific hydrologic data for High Bank Creek. The EPA identified six potentially relevant documents including a pamphlet on South Dakota aquifers, two reports on the geology of the Miscou and Little Eagle quadrangles, a report on the potential for petroleum production in Dewey and Corson Counties, a report on the geohydrology of the Standing Rock Sioux Reservation, and a report containing generalized potentiometric maps of three aquifers that underly the Reservation. After reviewing these six documents, the EPA was unable to identify any additional hydrologic information for High Bank Creek or aquifers in the area that would allow it to evaluate groundwater-related impacts from discharges from the Maher Facility to drinking water wells. .

This comment did not change the EPA's conclusion in Final EA, Appendix E Response 4 that infiltration impacts to drinking water wells from the issuance of the NPDES permit are unlikely. The EPA's review and consideration of this comment did not change the EPA's

¹ <https://www.usgs.gov/centers/dakota-water>

² <https://www.sdgs.usd.edu/>

finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 4. Environmental impacts of non-compliance

Chairman Sitting Bear commented that “EPA acknowledges significant discharge and Clean Water Act violations by the applicant in the recent past” and asserted that EPA “cannot take credit for future water quality improvements by assuming future compliance.” The Chairman further commented that the Standing Rock Sioux Tribe has notified EPA of other violations of federal and Tribal grazing and leasing laws and regulations by the applicant, but in the Final EA the EPA fails to acknowledge this history of legal violations and treats compliance as a “foregone conclusion.”

As the Tribe notes, the EPA has acknowledged violations of the Clean Water Act at the Maher Facility. In particular, the EPA brought an enforcement action (Docket No. CWA-08-2024-0005) against the Maher Facility for CWA violations and entered into an administrative compliance order on consent (AOC) with Maher, on May 7, 2024. This order is publicly available on EPA's website³ and was shared with the Tribe on May 20, 2024. The AOC is also included in the Final EA as Appendix B. The AOC includes details on the CWA violations the EPA identified at the Maher Facility. The AOC also orders a series of actions, which Maher has agreed to take, the first of which is ceasing discharge except in compliance with an NPDES permit. As part of its compliance with the AOC, Maher submitted the permit application for this CAFO permit. Additionally, as of March 2026, Maher has maintained compliance with the terms of the AOC. The EPA reviewed its records and could find no record of any notifications from the Standing Rock Sioux Tribe concerning violations of federal and Tribal grazing and leasing laws and regulations by the applicant. Thus, while the EPA recognizes that the Maher Facility did discharge without an NPDES permit in violation of the CWA after it began operation in January 2020, based on the facts outlined above, the EPA reasonably expects that the Maher Facility will comply with this permit. As a result, the EPA also expects that the issuance of the permit will continue to improve water quality in High Bank Creek.

The EPA's review and consideration of these comments did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 5. Effect of an NPDES permit

A comment from Chairman Sitting Bear stated, “EPA admits in the Final EA that the requisite setbacks and other requirements in the production area are governed by the CAFO regulations: ‘This type of cattle access to streams would not be permitted by CAFO

³ Available at:

[https://yosemite.epa.gov/OA/RHC/EPAAdmin.nsf/Filings/1C30C364750A001585258B18003C7A05/\\$File/CWA-08-2024-0005%20Maher%20Cattle%20AOC.pdf](https://yosemite.epa.gov/OA/RHC/EPAAdmin.nsf/Filings/1C30C364750A001585258B18003C7A05/$File/CWA-08-2024-0005%20Maher%20Cattle%20AOC.pdf)

regulations regardless of whether a facility has a CAFO permit.' Final EA, p. 31. This undermines the rationale for issuance of an NPDES permit based upon the FONSI.”

The EPA notes that this comment is drawn from the following statement from the Final EA, “Degradation of water quality parameters is greatest if NPDES permit requirements are not met and the cattle holding pens and/or their manure piles are located in close proximity to a waterbody and uncontrolled discharges occur during storm events. Additionally, water quality (and physical habitat) impacts can occur if large number of cattle have access to the stream to drink and then defecate. This type of cattle access to streams would not be permitted by CAFO regulations regardless of whether a facility has a CAFO permit.” Section 4.2.1. Water Resources, page 31. The EPA recognizes that the second to last sentence of the quote may be somewhat confusing but disagrees that it undermines the rationale for issuing the permit and the finding of no significant impact. Additionally, the last sentence of the quote makes it clear that this would not be allowed under the permit and supports the finding of no significant impact. The EA in Section 4.2.1. Water Resources also states under Alternative 1 - No Action, “This alternative would likely result in less water quality improvement to High Bank Creek than the other alternatives because the discharge of nutrients, pathogens (E. coli), TSS, and ammonia is not expected to be reduced as much without an NPDES permit.”

For clarification, the CAFO rule and regulation of production area requirements are outlined in 40 CFR 122.42(e)(1)(iv), which require CAFOs to “Prevent the direct contact of animals confined or stabled at the Facility with waters of the United States.” Any discharges to waters of the United States described above without a permit are considered a violation of the Clean Water Act. This regulatory requirement is reflected in multiple places in the draft permit, as follows. An NPDES permit is an important tool for regulating discharges because it translates a broad prohibition into specific requirements that implement the regulation.

1. The draft permit Part II.A.2.b.ii states, “Animals confined at the facility shall not be allowed to come into direct contact with waters of the United States. Fences may be used to restrict such access.”
2. The draft permit Part III.A.1.h states, “Prevent direct contact of confined animals with waters of the United States.”
3. The draft permit, Appendix A, Maher’s NMP, Section 5.d states, “Prevention of Direct Contact between Livestock and Surface Waters – Confined animals shall be prevented from having direct contact with waters of the United States. Maher Cattle Company will limit the potential for contact of livestock with surface water by making sure all livestock are kept fenced in. The facility will not have any surface water flowing through any of the pens where livestock are kept.”

With respect to the Chairman’s comment about setback requirements, the draft permit Part II, A, 3.h. has setback requirements for land application area only, not for the

production area. It states, “Land application setback requirements. Manure, litter, or process wastewater must not be applied closer than one hundred (100) feet to any down-gradient water of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States. The Permittee may elect to use a 35-foot vegetated buffer where applications of manure, litter, or process wastewater are prohibited as an alternative to the 100-foot setback to meet this requirement. As a compliance alternative, the Permittee may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.” Such setback requirements would not be required absent an NPDES permit. The NPDES permit with setback requirements for land application support the finding of no significant impact, because they improve water quality.

The EPA’s review and consideration of these comments did not change the EPA’s finding that no significant impacts are anticipated from the EPA’s action to issue an NPDES permit to Maher.

EPA Response 6. National Environmental Policy Act (NEPA), adequacy of analysis, and whether a FONSI should be issued

The EPA’s regulations implementing NEPA state that the types of actions normally requiring preparation of an environmental assessment (EA) include “EPA’s issuance of new source permits under section 402 of the Clean Water Act.” 40 C.F.R. § 6.205(b)(2).⁴ An EA must provide sufficient information and analysis for determining whether to prepare an environmental impact statement (EIS) or to issue a finding of no significant impact (FONSI). NEPA sections 106(b)(2)-(3), 42 U.S.C. §§ 4336(b)(2), (3); 40 C.F.R. § 6.205(a).

Consistent with 40 C.F.R. § 124.10, the EPA published the Draft NPDES permit (including the nutrient management plan (NMP)) and Statement of Basis for the permit as well as the Draft EA, for public comment on August 26, 2025 with the end date of October 13, 2025. In response to a request from the Standing Rock Sioux Tribe, the EPA subsequently extended the time to comment on the documents until October 17, 2025. On December 1, 2025, the EPA issued the Final EA and Preliminary FONSI, consistent with 40 C.F.R. §§ 6.203, 6.205, 6.206. The EPA accepted comments regarding the preliminary FONSI from December 1-31, 2025, in accordance with 40 C.F.R. §§ 6.203(b), 6.206(e). The EPA is now responding to comments on the preliminary FONSI and issuing its final FONSI consistent with NEPA section 106(b)(2), 42 U.S.C. 4336(b)(2) and 40 C.F.R. § 6.206 rather than prepare an EIS.

Comments from Chairman Sitting Bear and Running Antelope Local District Chairperson Taken Alive stated that the EPA should not finalize the FONSI and instead should prepare an environmental impact statement (EIS). Comments also asserted that the EPA did not conduct an adequate analysis in the EA. As discussed in the Final EA, Appendix E Response 7, NEPA is a purely procedural statute that does not mandate particular

results or substantive outcomes. *Seven County Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 180 (2025). NEPA imposes no substantive constraints on an agency’s ultimate decision to build, fund, or approve a proposed project. *Id.* Federal agencies, including the EPA, have substantial discretion to assess whether relevant environmental impacts are significant, and thus whether preparation of an EIS is warranted in advance of a particular federal action. *Seven County Infrastructure*, 605 U.S. at 181-82. Courts should afford substantial deference to Agency choices regarding the depth and breadth of NEPA analyses so long as they fall within a broad zone of reasonableness. *Id.* at 183. Additionally, “inherent in NEPA... is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information in the decision making process.” *Id.* at 183 (quoting *Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004)).⁴ Agencies are not required to analyze environmental effects from other projects separate in time or place from the project at hand, or that fall outside of the agency’s regulatory authority. *Seven County Infrastructure*, 605 U.S. at 188-189. “Under NEPA, agencies must consider the environmental impacts for which their decisions would be responsible.” *Id.* at 202 (J. Sotomayor, joined by J. Kagan and J. Jackson, concurring in the judgment).

The Supreme Court stated in *Seven County Infrastructure* that so long as the agency “addresses environmental effects from the project at issue, courts should defer to agencies’ decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a ‘manageable line.’” *Seven County Infrastructure*, 605 U.S. at 182. Whether a particular NEPA analysis “is detailed enough in a particular case itself requires the exercise of agency discretion – which should not be excessively second-guessed by a court.” 605 U.S. at 181

The Final EA sufficiently evaluated the environmental consequences from the EPA’s action to issue the NPDES permit based on available data, studies, and agency expertise for the following resource areas:

- Physical resources including water resources, air quality, noise environment and weather events,
- Biological resources including mammals, birds, fish and invertebrates.

⁴ The EPA Environmental Appeals Board utilizes the “rule of reason” when reviewing NEPA challenges. *In re. MHA Nation Clean Fuels Refinery*, 15 E.A.D. 648, 654 (EAB 2012). “[T]he Board’s role in reviewing NEPA compliance consists of ensuring that the Agency has adequately considered and disclosed the environmental impacts of the proposed actions in light of the totality of the circumstances.” *Id.* citing *In re. Carlota Copper Co.*, 11 E.A.D. 692, 777 (EAB 2004).

- Culturally significant plant and animal species,
- Socioeconomic environment including economic environment, human health/public health, and Tribal cultural practices, and
- Tribal Treaty Rights.

As noted in the Final EA, Appendix E Response 7, the EA did not specifically assess cumulative impacts associated with the following facilities and communities, due to the EPA's determination of the limited environmental impacts associated with the EPA's action to issue the NPDES permit and the large geographic distance from the Maher Facility to these facilities and communities: Wulf Cattle Facility and the Bear Soldier District (approximately 28 direct miles and hydrologically separated from flows below High Bank Creek until the Missouri River over 70 stream miles downstream), the Shadehill dam (approximately 150 stream miles upstream from the confluence of the Grand River with High Bank Creek plus approximately 34 stream miles down High Bank Creek from the Maher Facility to the confluence with the Grand River), the Running Antelope community (approximately 20 direct miles and 44 stream miles), and Rock Creek community (approximately 18 direct miles and approximately 27 stream miles upstream the Grand River from its confluence of High Bank Creek. EPA Response 7 below provides an additional response to explain the absence of cumulative impacts from the Shadehill Dam on the effect of any pollutants from a Maher discharge that could reach the Running Antelope community. As discussed in the Final EA, Appendix E Response 3, the only time that discharge will occur is during rare, high precipitation events during which in-stream flows of runoff will ensure significant dilution of any wastewater discharges.

Chairman Sitting Bear and Running Antelope Local District Chairperson Taken Alive's comments on the preliminary FONSI again raised concerns regarding the scope of the analysis with respect to impacts to the Grand River at the confluence with High Bank Creek. As discussed above in this EPA Response 6, the EPA determined the scope of the analysis in its discretion in light of the potential impacts associated with issuance of the NPDES permit by the Agency. The confluence of High Bank Creek with the Grand River is approximately 34 stream miles downstream from the Maher Facility and based on the information considered in the EA and in preparing the NPDES permit, the EPA does not believe there will be significant impacts from the issuance of the NPDES permit to the Maher Facility at the confluence of High Bank Creek and the Grand River and therefore an EIS is not warranted in order to assess those impacts.

Regarding impacts to water quality and aquatic life, including impacts to High Bank Creek, the EA as well as the NPDES permit – including the permit's Statement of Basis and the associated nutrient management plan – address potential water quality impacts from the Maher Facility. See EA Sections 3.2.1 and 4.2.1; Permit Parts II-VI and Appendix A (NMP); and Statement of Basis Sections 6-10. The EPA notes that all NPDES permitting documents including the NMP were available for comment throughout the draft NPDES permit and

Draft EA comment period. Specific data as well as technical requirements from the EPA's CAFO regulations for NPDES permits were incorporated into the draft NPDES permit and NMP and were included in the documents provided for public comment. See 40 C.F.R. Part 412. As documented in the EA Sections 4 and 5, the EPA's issuance of an NPDES permit to the Maher Facility will likely reduce the adverse impacts of the Facility to water quality in High Bank Creek as well as impacts to aquatic life including fish.

A comment from Chairman Sitting Bear stated that the Final EA does not support a FONSI because the EA fails to adequately consider Tribal health effects. In particular, the comment raised concerns that the EPA relied on South Dakota Department of Health (SD DOH) data and stated *E. coli* data excludes Tribal members and ignores more appropriate Center for Disease Control and Prevention (CDC) or Indian Health Service (IHS) statistics. EPA consulted with the SD DOH. The SD DOH representative explained that Shiga toxin-producing *E. coli* (STEC) is a reportable condition in South Dakota. Confirmed STEC cases are reported to the state by the health care facility where the patient receives care, including IHS clinics. Accordingly, the state's data include all reported STEC cases in South Dakota, including Tribal members who receive care at in-state facilities. The EPA also consulted with an epidemiologist at the North Dakota Department of Health (ND DOH) disease control and surveillance program about STEC in Sioux County, ND and the areas encompassing the northern area of Reservation. Since 2020 there have only been two confirmed cases of STEC, one in 2023 and one in 2025. By state law, all confirmed cases of STEC are reported to ND DOH if the patient has their residence in North Dakota, including Tribal members receiving care at an IHS clinic. This also applies even if the individual is travelling outside North Dakota at the time of positive lab confirmation. In summary, the EPA found that both states' surveillance systems include STEC cases among Tribal members through reporting by IHS clinics and other health care facilities.

Chairman Sitting Bear's comment also expressed concern regarding impacts to drinking water and wells. However, no specific wells or drinking water intakes were identified by commenters that may be impacted. EPA's assessment of potential impacts of the Facility on known downstream domestic water intakes and wells is in EPA Response 3 and the Final EA, Appendix E Response 4. In short, the EPA concluded that such impacts from any Facility discharges into High Bank Creek are unlikely.

A comment on the preliminary FONSI from Chairman Sitting Bear raised concerns with EPA not including in the Final EA certain CAFO health-risk studies submitted with his comments on the Draft EA. In response, the EPA reevaluated these excluded studies (Son and Bell⁵,

⁵ Son, J-Y and Bell, L.B. Health disparities associated with exposure to animal feeding operations, including concentrated animal feeding operations (CAFOs), in North Carolina, Pennsylvania, and Virginia, USA. *Environ Res Lett.* 2025; 20(5). <https://doi:10.1088/1748-9326/adc291>.

Cole et al.⁶ and Heederik et al.⁷) and considered additional articles provided in the comment (Spiegelman⁸ and Chartres et al.⁹).

For the Son and Bell study, EPA identified limitations in the response to the Draft EA comments and therefore did not include it in the Final EA. See Final EA, Appendix E Response 7, pages 40-41. Son and Bell reported small but statistically significant positive association between living within 10 km of CAFOs and mortality (odds ratios of 1.028 in NC, 1.039 in PA, 1.053 in VA), meaning roughly 2.8%–5.3% higher risk of mortality, respectively.

In most clinical or social science contexts, an odds ratio of 1.023, 1.039 or 1.053 is considered a weak or negligible effect.¹⁰ The EPA searched the U.S. National Library of Medicine (NLM) Pub Med database¹¹ and the Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles¹² for sulfides, methane, and ammonia and found no supporting biomedical literature showing a plausible mechanism linking CAFO emissions to diabetes or cerebrovascular disease (e.g. stroke) and could not identify additional studies in the biomedical literature demonstrating a similar outcome. While EPA agrees that there is a 95% statistical confidence level in the correlation, a correlation does not establish causation. Rather, this indicates a statistically significant association between variables in the study. A correlation does not prove that one directly causes the other to change. Additionally, the study by Son and Bell is an ecologic study, which by design, cannot establish a causal association between exposure and outcome. Ecologic studies are useful for hypothesis generation, which is then evaluated in more depth by additional studies to evaluate whether there is a causal relationship. There may be reasons other than CAFO emissions causing these small increased associations in health outcomes, such as those predisposed to such health outcomes living closer to CAFOs. These relationships are often caused by coincidental chance or a "third variable" that influences both, making them appear related when they are not. This uncertainty about the cause is the reason for the EPA not including the study as part of its EA analysis.

Chairman Sitting Bear's comments also raised concerns with the EPA's decision not to include studies by Cole et al. and Heederik et al. in the Final EA analysis because these

⁶ Cole, et al. Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects. *Environmental Health Perspectives*; 108 (3). 2000. <https://ehp.niehs.nih.gov/doi/10.1289/ehp.00108685>.

⁷ Heederick et al. Health Effects of Airborne Exposures from Concentrated Animal Feeding Operations. *Environmental Health Perspectives*; 115 (2). 2007. <https://pmc.ncbi.nlm.nih.gov/articles/PMC1817709/>.

⁸ Spiegelman D. Approaches to uncertainty in exposure assessment in environmental epidemiology. *Annual Review of Public Health*. 2010; 31(149-163). <https://doi.org/10.1146/annurev.publhealth.012809.103720>.

⁹ Chartres, et al.. Conducting Evaluations of evidence that are transparent, timely and can lead to health-protective actions. *Environ Health*. 21(1):123. 2022. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9720912/#CR104>.

¹⁰ Egbuchulem K.I. The Odds Ratio: A measure of strength in clinical research and an antithesis to odds in gambling. *Annals of Ibadan Postgraduate Medicine*. 2025;23(1). <https://pmc.ncbi.nlm.nih.gov/articles/PMC12337969/>.

¹¹ <https://pubmed.ncbi.nlm.nih.gov/>

¹² <https://www.atsdr.cdc.gov/toxicological-profiles/about/index.html>

studies were from occupational exposure from working at swine CAFO facilities, and Maher is a cattle operation with concerns to the community. See Final EA, Appendix E Response 7, page 41. Section 3.5.2 of the Final EA discusses the differences between swine and cattle CAFOs. The EPA recognizes the “healthy worker effect” as a form of selection bias in occupational epidemiology where employed individuals exhibit lower mortality and morbidity rates than the general population. Section 3.5.2 of the Final EA recognizes that community members’ primary exposure route from the Maher cattle CAFO is air emissions, which can affect respiratory health through particulates, endotoxins, ammonia, hydrogen sulfide, and bioaerosols. While evidence of health impacts is strongest for workers, the Final EA describes the evidence of community impacts based on proximity measures (e.g., within 0.5–2 miles), with associations that decline with distance, becoming insignificant beyond about 5 miles. As stated in the Final EA, zero residents live within one mile and only 10 within two miles of Maher. EPA’s decision to exclude certain studies from the Final EA does not change its overall conclusions. EPA relied on applicable studies to establish the community’s baseline health conditions in Section 3.5.2 of the Final EA. Extrapolating occupational exposure or swine operations from these excluded studies would not have changed the finding in Section 4.4.2 that issuing an NPDES permit is not expected to have an impact on emissions or any potential health effects.

Chairman Sitting Bear’s comments also noted that a sentence in the Draft EA about concerns with nuisance odor issues around McLaughlin, SD was removed in the Final EA. This statement is in Section 3.2.2 of the Draft EA. This sentence was removed in the Final EA, because it was connected to a planned air quality monitoring effort around a different CAFO facility in McLaughlin. This monitoring effort is no longer planned, so both of the following sentences were removed from the Final EA because the information is no longer accurate: “Additionally, the Standing Rock Reservation Tribal members have voiced concerns about nuisance odor issues around McLaughlin, SD related to another CAFO. The EPA is collaborating with Tribal staff with regard to initiating air quality monitoring efforts in the area.” The other CAFO facility is located over 25 miles away from Maher.

In response to input related to health impacts and concerns about risks from dust and emissions, the EPA also added additional voluntary best management practices (BMPs) to Alternative 3 in Section 2.1.3 of the EA. With this addition, Maher would work with the National Resources Conservation Service to implement voluntary BMPs for manure and dust management to reduce odors and airborne particles. The EPA also updated its analysis of the impacts of Alternative 3 to consider this addition in EA Sections 4.2.2, 4.4.2, and 5.1.3.

Chairman Sitting Bear again raised concerns that animal transport trucks will spread *E. coli*. The EPA disagrees with the statements made in the comment. The comment stated, “The EA response notes that there is significantly greater number of reported cases of *E. coli* in the county where the Maher CAFO operation is located, compared with no cases in the nearby county.” Section 3.5.2 of the EA discusses the number of *E. coli* infection cases reported in 2023. While there were no cases reported from Dewey County,

which is just south of Maher, there were less than five reported in Corson County where Maher is located (South Dakota Department of Health, 2024). The EPA disagrees that a single year difference less than five verses zero is significantly greater number of cases. To put these numbers in context, the EPA state in the Final EA, Appendix E Response 7 on page 41, “This is an incidence of 0 cases per 1,000 people in Dewey County and <1.28 cases per 1,000 people in Corson County.”

Chairman Sitting Bear’s comment reiterated the Tribe’s concern about *E. coli* dispersion through animal transport from the CAFO. The comment stated, “Rather than impose measures to prevent CAFO-associated *E. coli* risk, the EA simply says that they do not have information on the causes or exposure pathways – sticking to its pattern of treating uncertainty as ‘zero’ risk. The EA cites as support for its dismissal of this startling elevated case report a study on the general known routes of exposure for *E. coli*, willfully ignoring the obvious source – a CAFO. In fact, the paper cited by the EA - Stein and Katz, 2017 – was written with the understanding that cattle operations result in *E.coli* dispersion, with ‘implications for human health’.” While Stein and Katz¹³ summarized several studies on the epidemiology of *E. coli* shedding by cattle and identified studies related to exposure pathways that were foodborne, waterborne, from farm visits, from petting zoos, and from beef processing plants; it did not indicate an exposure pathway related to spread by animal transport trucks. Heiman et al.¹⁴ analyzed 390 outbreaks caused by *E. coli* reported in the United States between 2003 and 2012 and found 65% of the transmissions involved food, followed by animal contact, person-to-person transmission and the waterborne route; it did not indicate an exposure pathway related to spread by animal transport trucks. The EPA searched the U.S. National Library of Medicine (NLM) Pub Med database¹⁵ and online search engines and found no studies or other information indicating animal transport trucks are a public health concern related to *E. coli*. Section 3.5.2 of the Final EA was updated to reflect this information. The comment asserts an assumed risk and exposure pathway—spread of *E. coli* by animal transport trucks—that is not supported by the literature cited (e.g., Stein and Katz, 2017) or by broader outbreak analyses (e.g., Heiman et al.), and for which EPA found no substantiating studies. Accordingly, the Final EA appropriately reflects the available data and epidemiological evidence in Section 3.5.2, and the finding of no significant impact is supported.

Regarding plants and animals that are the subject of hunting and fishing practices or other cultural significance, see the Final EA, Appendix E Response 11. The EPA revised the EA to explain further how the three alternatives affect plants and animals. Comments regarding common causes of turbidity, foam on surface waters, fish sores, other impacts to aquatic species, impacts to vegetation (e.g., berry abundance, choke cherries, plums, sage) and

¹³ Stein RA, Katz DE. *Escherichia coli*, cattle and the propagation of disease. FEMS Microbiology Letters. 2017 Mar 1; 364(6).

¹⁴ Heiman KE, Mody RK, Johnson SD et al. *Escherichia coli* O157 Outbreaks in the United States, 2003-2012. Emerg Infect Diseases. 2015; 21:1293–301.

¹⁵ <https://pubmed.ncbi.nlm.nih.gov/>

sores from swimming are addressed in the Final EA, Appendix E Response 13. See also EPA Response 2 in this document.

Regarding air quality impacts associated with the EPA's action to issue an NPDES permit for Maher, no change in air quality is expected as a result of the EPA's action. See EA at Section 4.2.2. Because the Facility is existing and could continue to operate regardless of whether the EPA issues the NPDES permit, similar air quality to the current baseline will likely continue. The EPA is not aware of any plan by the Maher Facility to expand its operations in a manner likely to change air quality from its current baseline.

The EPA received comments on the preliminary FONSI related to environmental justice as well as E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. However, E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, dated January 21, 2025, revoked E.O. 12898. See 90 Fed. Reg. 8633 (Jan. 31, 2025). As noted in the response to comments on the Draft EA, E.O. 12898 was revoked prior to issuance of the Draft EA for public comment, therefore the EPA did not conduct an environmental justice analysis as part of the EA. Within this comment about environmental justice was a comment about health effects, which EPA addresses at EPA Responses 1 and 7 and portions of this EPA Response 6, above.

The EPA received input that the description of the socioeconomic environment focused on Timber Lake, which is upstream of Maher, rather than the Tribal communities downstream. While the Draft EA included several statistics from the U.S. Census Bureau based on the nearest population center in Timber Lake, the evaluation of the socioeconomic environmental was broader. To address this comment, the EPA added additional statistics to include Corson County throughout the Final EA.

Comments received regarding Tribal consultation, treaty rights and trust resources are addressed in the Final EA, Appendix E Responses 9, 10 and 12, respectively. The EPA acknowledges comments received on the preliminary FONSI regarding the Wounded Knee massacre and concerns expressed about the potential for impacts to communities downstream of the Maher Facility. The EPA notes that as documented in the Final EA, Statement of Basis for the draft NPDES permit, and draft NPDES permit, issuance of the NPDES permit to the Facility will improve water quality downstream of the Facility. Comments received regarding compliance with the National Historic Preservation Act are addressed in the Final EA, Appendix E Response 8.

The EPA found after evaluating environmental impacts through the environmental assessment that the Agency's issuance of a CWA Section 402 NPDES permit for the Maher Facility would not have a reasonably foreseeable significant impact on the quality of the human environment and the Agency need not prepare an EIS. The EPA therefore issued a preliminary FONSI for its action on the Maher NPDES permit consistent with NEPA section 106(b)(2), 42 U.S.C. 4336(b)(2) and 40 C.F.R. § 6.206.

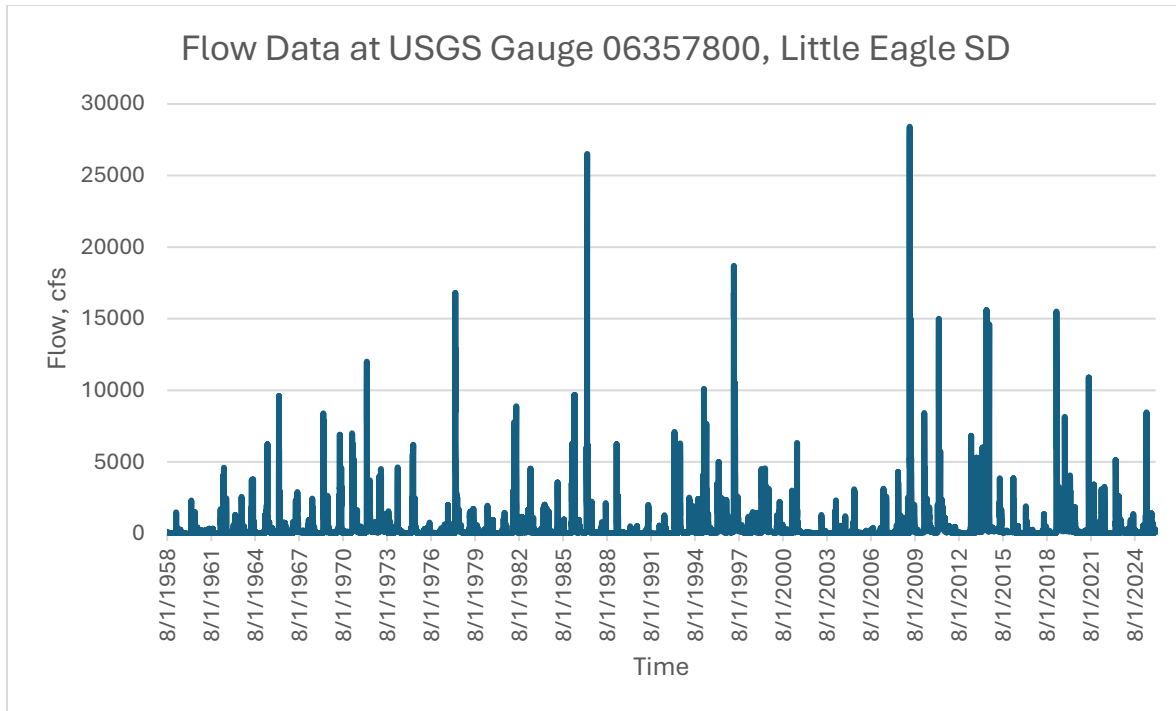
The EPA's review and consideration of these comments did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 7. Consideration of cumulative impacts

Chairman Sitting Bear stated, "EPA's refusal to determine the cumulative impact of low flows in the Grand River with discharge from Maher mis-states the spatial scope, which is the confluence of High Bank Creek and the Grand River, not the location of Shadehill Dam itself. Shadehill's effect is located at downstream on the Reservation, including the mouth of High Bank Creek, where dilution capacity is diminished significantly." Chairman Sitting Bear also made other comments related to cumulative effects and downstream impacts.

As discussed in EPA Response 6, above, EPA determined the scope of the NEPA analysis in its discretion, consistent with NEPA and the *Seven County Infrastructure* U.S. Supreme Court case, in light of the potential impacts associated with issuance of the NPDES permit by the Agency. Additionally, the EPA previously responded to comments concerning the cumulative impacts of the Shadehill Dam in the Final EA, Appendix E Response 7, page 37. The EPA understands the quoted comment to mean that the Tribe believes the Agency must consider the impacts of the Shadehill Dam on flows in the Grand River at the confluence of High Bank Creek and the River. Further, the EPA understands the Tribe as asserting that the dam has diminished the capacity of the Grand River to provide dilution for discharges from the Maher Facility. Through the following additional analysis to address the identified concerns, the EPA considers the impact of discharge from the Maher Facility on the Grand River with flows as affected by Shadehill Dam.

The EPA reviewed flow data from three United States Geological Service (USGS) monitoring gauges on the Grand River, including two gauges upstream of the Shadehill Dam and one gauge downstream of the dam. The first monitoring location, USGS-06356500, is located on the South Grand River near Cash, South Dakota, and has recorded daily monitoring data back to December 1, 1945. The second monitoring location, USGS-06355500, is located on the North Grand River near White Butte, South Dakota, and has recorded daily monitoring data back to December 1, 1945. The third monitoring location, USGS-06357800, is located at Little Eagle, South Dakota, downstream of the confluence with High Bank Creek, and has recorded daily monitoring data back to August 1, 1958, which is captured in the following graph.



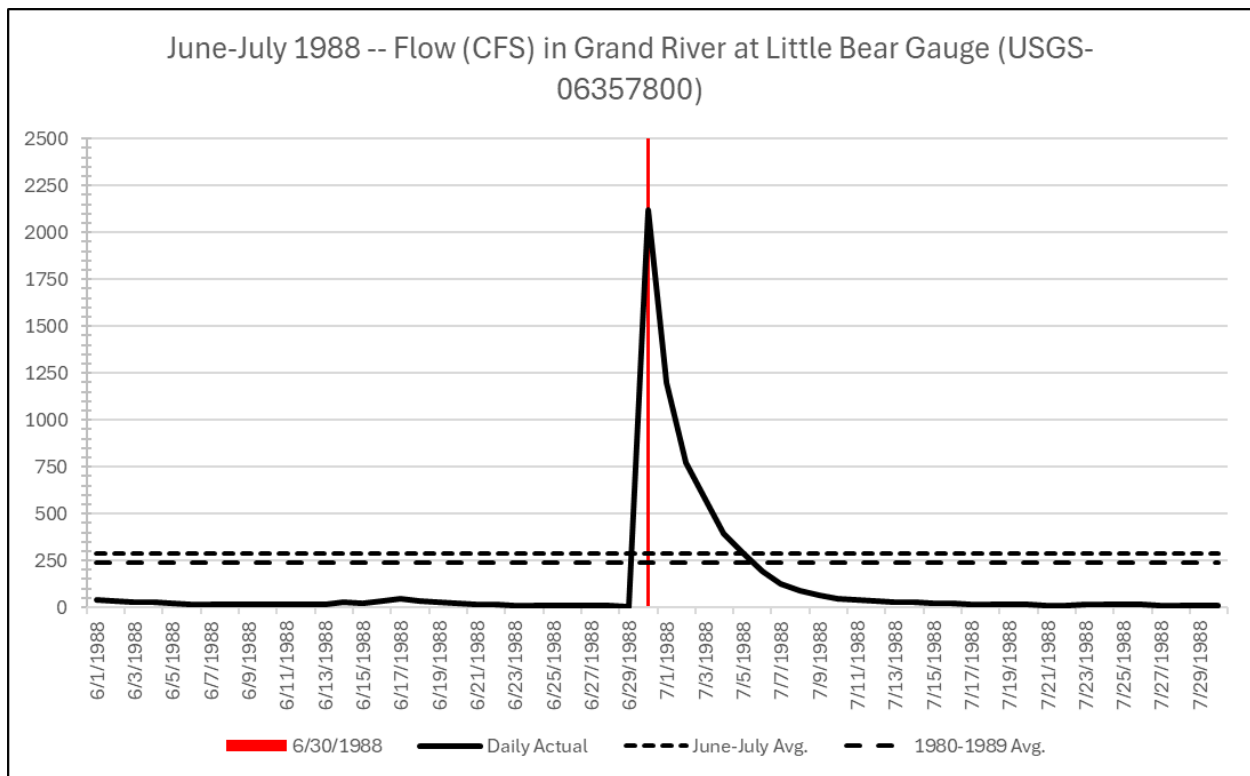
Because Shadehill Dam was built in 1951, the EPA does not have a way to compare pre-dam and post-dam flow figures for Little Eagle. However, because the daily flow data since 1958 shows significant variability over time and no clear downward trend, the EPA cannot conclude that flow in the Grand River at Little Eagle, SD, is decreasing over time or that dilution capacity at the mouth of High Bank Creek is diminishing.

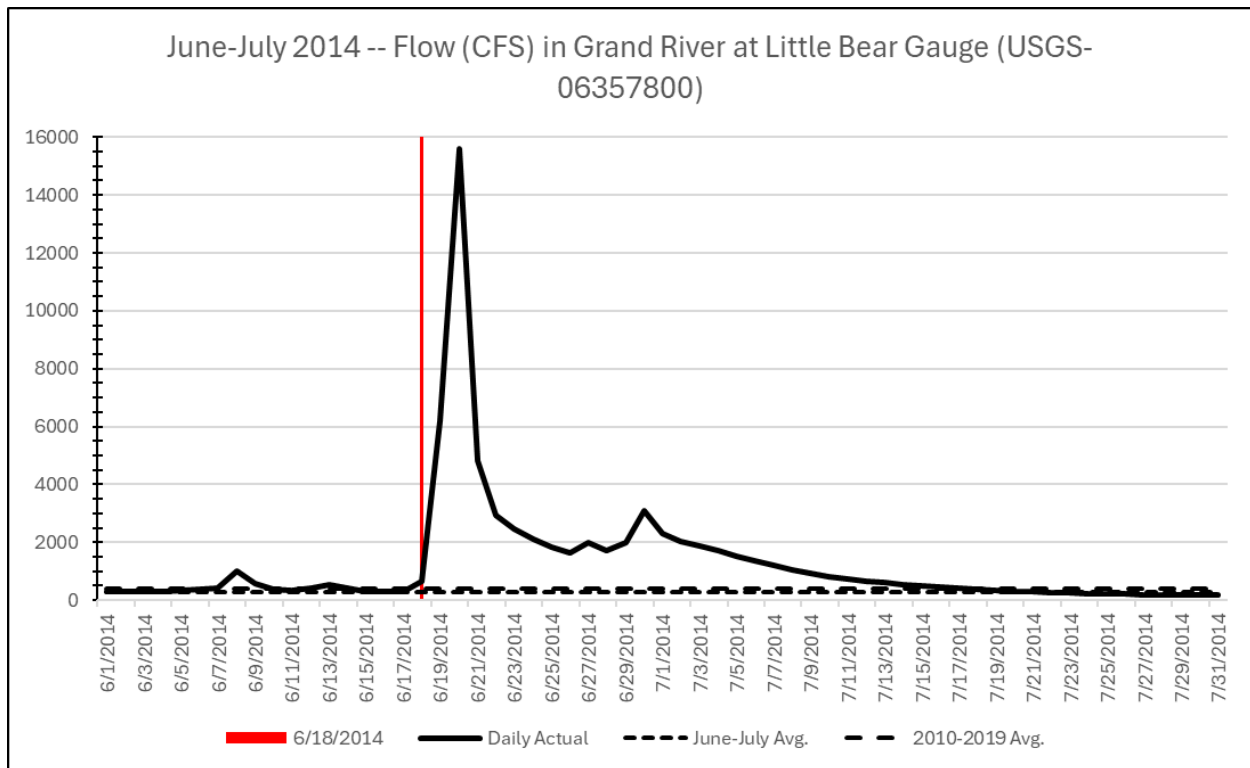
The flow data for the Little Eagle monitoring station, USGS-06357800, which is about 7 miles downstream of the confluence with High Bank Creek, does allow consideration of USGS daily flow data with NOAA daily precipitation data from Timber Lake, South Dakota. This allows the EPA to consider the dilution capacity of the Grand River during periods in which discharge from the Maher Facility would be permissible under an NPDES permit by looking at actual instream flows on high precipitation days. As the EPA explained in the Final EA, Appendix E Response 3, pages 30-31, the Maher Facility operates and maintains three lagoons with the storage capacity to contain all wastewater it generates from its production area, as well as the precipitation volume that would fall on the production area from a 25-year, 24-hour rainfall event. In this area of South Dakota, a 25-year, 24-hour rainfall event generates 3.74 inches of rain. Because the Maher Facility has this storage capacity, it will only discharge when rainfall exceeds 3.74 inches. There have only been two precipitation events of this volume in the area of the Maher Facility since data collection started in 1911. These two storm events occurred on June 30, 1988, and June 18, 2014.

The EPA used the flow data from the Little Eagle gauge, USGS-06357800, to calculate the following average flows in the Grand River by month and decade:

Averaging Period	Average Flow (cfs)
June-July (1958-2025 data)	284.8
1980 to 1989	237.4
2010 to 2019	388.2

The EPA then graphed the daily flow data for June and July, along with the monthly and relevant decade average, to provide a snapshot of the flow in the Grand River at the time the two high-volume (i.e., 3.74 in.) precipitation events occurred. In these graphs, the vertical line marks the date of the precipitation events.





These graphs demonstrate that both the June 30, 1988, and the June 18, 2014, precipitation events occurred at a time in which the Grand River was at or below its average flow for the month and decade in which the events occurred. The graphs also demonstrate that the precipitation events coincided with rapid and very large increases in flows in the river, because storms that generate enough rain to cause a discharge from the Maher Facility to High Bank Creek will also generate enough rain to cause high volumes of runoff throughout some or all of the larger Grand River watershed. Thus, while typical flow in the Grand River may be relatively low, the very large flows that occur during precipitation events exceeding 3.74 inches would provide dilution for any discharges from the Maher Facility. See *also* Final EA, Appendix E Response 3, pages 30-31. Because these precipitation events provide instream dilution, the potential for pollutants in authorized discharges from a permitted Maher Facility to cause measurable environmental or human health impacts, when considering the cumulative effect of Shadehill Dam’s restriction on baseline flows in the Grand River, is minimal as it pertains to communities in the vicinity of the confluence of Grand River and High Bank Creek, such as the Running Antelope District.

The EPA’s review and consideration of this comment did not change the EPA’s finding that no significant impacts are anticipated from the EPA’s action to issue an NPDES permit to Maher.

EPA Response 8. Disclosure of information to the public

Chairman Sitting Bear commented that “the nutrient management plan relied upon by EPA has not been disclosed to the public. EPA cannot base a FONSI on undisclosed future

plans.” The Chairman also raised concerns about perceived efforts to limit Tribal participation.

A similar comment was raised during public notice of the Draft EA, the draft NPDES permit (which included the nutrient management plan), and Statement of Basis for the permit; see in particular the Final EA, Appendix E Response 7 and Response 9.

As stated in the Final EA, Appendix E Response 7 on page 38, third paragraph: “Consistent with 40 C.F.R. § 124.10, the EPA published the Draft NPDES permit, Statement of Basis for the permit and nutrient management plan (NMP) as well as the Draft EA, for public comment on August 26, 2025 with the end date of October 13, 2025. In response to a request from the Standing Rock Sioux Tribe, the EPA subsequently extended the time to comment on the documents until October 17, 2025.”

See also Final EA, Appendix E Response 9, page 53, second paragraph: “The attachment to the Tribal Chairman’s letter dated October 17, 2025 (received October 21, 2025) also asserted that “EPA relies on unsupported conclusions and generalizations, such as the value of a nutrient management plan that has not been disclosed or made public.” The EPA disagrees with this input. The nutrient management plan was included in Appendix A of the draft NPDES permit as part of the public notice and comment process on the draft permit.

In addition, the draft Maher NPDES permit, draft Statement of Basis, nutrient management plan (in Appendix A of the permit), and the Maher permit application can be found on this website: <https://www.epa.gov/npdes-permits/npdes-permit-maher-cattle-company-south-dakota>.

The EPA’s review and consideration of this comment did not change the EPA’s finding that no significant impacts are anticipated from the EPA’s action to issue an NPDES permit to Maher.

EPA Response 9. Tribal consultation, NHPA consultation, and request for meeting with Running Antelope Local District

A comment from Chairman Sitting Bear asserted that “[t]he area of potential effects to historic properties was determined without Tribal consultation, and is far too limited. EPA failed to comply with the NHPA section 106 process, including consultation on the APE and the identification, evaluation of impacts and determination of effects.” The Chairman also raised concerns about perceived efforts to limit Tribal participation.

Additionally, a comment from Running Antelope Local District Chairperson Taken Alive, requested that the EPA visit this district for an in-person meeting before issuing a permit. The EPA understands the Running Antelope Local District to be a local Tribal government entity, representing only a portion of the Tribe’s reservation, and that it is separate from the Standing Rock Sioux Tribe’s government. The comment indicated the purpose of the

meeting would be to see the potential impacts of Maher to public health and the environment, including water quality.

As discussed below, the EPA made multiple attempts to schedule Tribal consultation and NHPA consultation meetings with the Standing Rock Sioux Tribe, as well as a meeting with Running Antelope Local District Chairperson Taken Alive, but the Tribe did not schedule any meetings.

On December 1, 2025, the EPA sent a letter to Chairman Sitting Bear offering Tribal consultation regarding the EPA's determination of whether it is necessary to prepare an EIS or issue a FONSI and the final NPDES permit. Next, in response to the comment from Chairman Sitting Bear asserting the EPA failed to comply with NHPA, the EPA sent a letter to Chairman Sitting Bear and the Tribal Historic Preservation Officer (THPO), dated February 18, 2026 and transmitted on February 19, 2026. The letter's purpose was two-fold: to clarify the communications and input the EPA received on this topic through consultation with the Tribe and from individuals representing Tribal interests, and to offer another opportunity for NHPA Section 106 consultation with the Tribe to discuss any potential impacts not yet considered. Individuals representing Tribal interests include Dr. Mafany Mongoh, Institutional Review Board Chair and professor at Sitting Bull College; Tyrel Iron Eyes, Tribal Archeologist with the Standing Rock Sioux Tribe; and Dr. Mike Gutzmer, Tribal Biologist and Principal of New Century Environmental. The EPA notes it also reached out to the Standing Rock Sioux Tribe THPO multiple times and did not receive any information. The information from individuals representing relevant NHPA Tribal interests is included in Section 5.1 of the Final EA.

In response to the request from Chairperson Taken Alive for a meeting with the EPA in her December 20, 2025 comment letter, the EPA contacted the Tribal staff contact listed in the comment letter. The first communication to discuss scheduling with the contact provided occurred on January 16, 2026. Communications between the EPA and Tribal staff spanned mid-January through mid-February 2026—including voicemails, emails, and calls—and resulted in the EPA and Tribal staff agreeing on a possible meeting during the first two weeks of March. These communications in January and February 2026 also followed up on the EPA's December 1, 2025 Tribal consultation offer to Chairman Sitting Bear. In an August 13, 2024 Tribal consultation meeting, the Tribe's Chairwoman at that time, Janet Alkire, requested that the EPA work with two Tribal staff on the Draft EA, which included this same individual. The EPA suggested in the January and February communications that the meeting with Chairperson Taken Alive and Tribal consultation with the Tribal government could co-occur if Tribal leadership were interested in consulting. On February 13, 2026, the EPA confirmed the first two weeks of March were available for key EPA attendees to attend a meeting and to consult, and on February 17, 2026, the Tribal staff indicated they would seek dates from Tribal leadership.

On February 19, 2026, the EPA transmitted a letter signed on February 18 offering further NHPA consultation to Chairman Sitting Bear and the THPO. This additional NHPA

consultation offer recognized the larger efforts to schedule a Tribal consultation meeting in March. In addition to the letter offering further NHPA consultation, the EPA emailed the Tribal staff contact on February 18, 2026 and suggested that NHPA could be part of any consultation agenda.

The EPA has not received further communication from the Tribal staff regarding the meeting with Chairperson Taken Alive or possible consultation with Tribal leadership. The Tribe did not request further NHPA consultation within the 30-day window specified in the letter transmitted February 19, 2026 or before the EPA made the decision to finalize the FONSI. The Tribe also did not request Tribal consultation within the 30-day window specified in the December 1, 2025 letter or before the EPA made the decision to finalize the FONSI.

EPA Responses 1, 6, and 7 discuss comments on potential impacts to the Running Antelope District. The EPA's review and consideration of this comment did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 10. Dispute resolution

Chairman Sitting Bear commented that the Tribe “reserves the right to require dispute resolution with EPA Region 8, in accordance with the Region 8 Tribal Consultation Policy.”

EPA Region 8 does not have a Tribal Consultation Policy. Rather, the [EPA Policy on Consultation with Indian Tribes](#) applies to the entire agency, including Region 8. The Tribe, however, appears to be referring to the [EPA Region 8 Policy for Environmental Protection in Indian Country](#). The EPA notes that the Tribe did not invoke the dispute resolution provision of that Region 8 policy before the EPA made the decision to finalize the FONSI and to issue the final NPDES permit.¹⁶

The EPA's review and consideration of this comment did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 11. Tribal treaty rights

Chairman Sitting Bear commented that “EPA failed to accurately evaluate the potential impact to Standing Rock's Treaty right to hunt and fish on our own land and our own Reservation. The FONSI is fatally flawed, and far more analysis is required in order for EPA to issue a valid NPDES permit to Maher,” in addition to related comments about the Tribe's treaty rights.

¹⁶ Also, the EPA disagrees that the Region 8 policy authorizes the Tribe to “require” dispute resolution. The policy allows the Tribe to “invoke” a dispute resolution process, but in many instances the policy gives EPA Region 8 discretion in whether to proceed with the process. Additionally, the policy's express disclaimer states that the policy is not enforceable against the EPA.

The EPA disagrees with these comments. The Tribe provided similar comments and input on the Draft EA concerning treaty rights, and the EPA responded to them. Please see the Final EA, Appendix E Response 10, at pages 56 – 58. In short, the EPA concluded that the draft NPDES permit would not negatively impact treaty rights asserted by the Tribe.

For example, the Tribe's input during the Tribal consultation process and public comments on the Draft EA raised concerns that the Maher Cattle Facility negatively impacts the water and air in the Tribe's reservation, as well as the people, fish, animals and plants that rely on the water and air in the reservation. But the Final EA determined that permit issuance would likely improve water quality in High Bank Creek compared to the no action alternative of the EPA not issuing a permit to Maher as it continues to operate. The Facility currently lacks an NPDES permit, and therefore issuing the NPDES permit would likely improve water quality as compared to the status quo. The permit would thereby likely reduce or have no impacts to people, fish, animals and plants that rely upon High Bank Creek. See EA sections 4.2.1, 4.3 and 4.4.2. The EA also determined that permit issuance would result in no change in air quality, see EA section 4.2.2, and therefore permit issuance would not be expected to adversely impact public health. As a result, the EPA concluded that issuance of the permit would not adversely affect any treaty rights asserted by the Tribe. The EPA's consideration of impacts on treaty rights is consistent with the legal standards applied in the cases cited in the Tribe's comments: *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F. Supp.3d 101 (D.D.C. 2017); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 440 F. Supp.3d 1 (D.D.C. 2020), *aff'd Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032 (D.C. Cir. 2021).

The EPA's review and consideration of this comment did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.

EPA Response 12. Tribal sovereignty and opportunity to participate

Chairman Sitting Bear commented that "EPA must include a term in any NPDES permit that may be issued to Maher Cattle Co. must comply with all applicable Tribal laws," citing the Tribe's treaties with the federal government and the *EPA Policy on Consultation with Indian Tribes*. The Chairman specifically requested permit terms providing Tribal staff with a reasonable right of entry of the Maher Facility for inspection free from intimidation, requiring Maher Cattle to pay the Tribe to take samples upon any discharge, and limiting the permit to no more than 10 years.

Chairman Sitting Bear also commented as follows: "An EIS is needed to remedy EPA's intentional efforts to limit Tribal participation. EPA published the Notice of Intent prior to Maher's filing a completed application for an NPDES permit. That caused limited opportunity for the Tribe to review and comment on the environmental documents published in this matter. It inhibited EPA's compliance with the consultation requirements.

EPA penalized Standing Rock, the affected community, for its premature publication of the NOI. That must be remedied in a more thorough NEPA process.”

The EPA disagrees with the comment that EPA must include a term in any permit issued to Maher requiring compliance with all applicable Tribal laws. The Tribe raised similar comments on the draft NPDES permit and Draft EA, which the EPA addressed. See the Final EA, Appendix E Response 9, at pages 46 – 48, and Response 10, at pages 56 – 58. To the extent this comment newly asserts that EPA must include a condition requiring compliance with applicable Tribal laws because of the guiding principles articulated in the *EPA Policy on Consultation with Indian Tribes*, the EPA disagrees with this comment. The Policy provides that “guiding principles should be applied to the implementation of this Policy to the extent practicable and permitted by law.” Thus, the guiding principles do not provide the authority the Tribe asserts, and, without another source of legal authority, the EPA cannot condition the Maher CAFO permit as requested.

The EPA notes that it also lacks the authority to include the requested permit terms “providing Tribal staff with a reasonable right of entry of the Maher Facility for inspection free from intimidation, requiring Maher Cattle to pay the Tribe to take samples upon any discharge, and limiting the permit to no more than 10 years.” The Tribe raised similar comments concerning Tribal access and monitoring on the draft NPDES permit and EA, which the EPA addressed. See the Final EA, Appendix E Response 9, at page 46. With regards to the Tribe’s request for a 10-year permit term, Section 402(b)(1)(B) of the CWA requires that NPDES permits be issued “for fixed terms not exceeding five years.” Thus, the EPA can only issue the Maher CAFO permit for a maximum of 5 years.

The EPA disagrees with the comment that it sought to limit the Tribe’s participation by publishing a Notice of Intent before receiving a complete NPDES permit application from Maher. As an initial matter, it is unclear what reference is intended by “Notice of Intent”.

“Notice of Intent” may refer to the NEPA scoping notice. In May 2024, the EPA issued a scoping notice soliciting public input regarding the development of a Draft EA as part of the NPDES permitting process to inform its decision whether to issue an NPDES permit to Maher, and if so, with what conditions. EA at 4-5.¹⁷ The NEPA scoping notice was posted on the EPA’s website with Maher’s NPDES permit application and distributed by email to parties known to have an interest in this matter, including Standing Rock Sioux Tribe leadership and the Standing Rock Sioux Tribe’s Environmental Director and Water Quality Administrator. EA at 4-5. The EPA received no comments in response to its NEPA scoping notice soliciting public comments on the development of the Draft EA. EA at 5. On February 17, 2025, the EPA received a revised NPDES permit application from Maher and determined the permit application was complete on March 4, 2025. EA at 2. The purpose of publishing the NEPA scoping notice at the time the EPA had the initial permit application was to identify at an early stage any potentially significant environmental issues to be evaluated in detail and insignificant issues to be de-emphasized, focusing the

¹⁷ See 40 C.F.R. §§ 6.200(c)(2-4), 6.203(a)(2),(4-5).

scope of the environmental review accordingly. The EPA made a diligent effort to involve the public, including the Tribe, in the preparation of the environmental review document.

“Notice of Intent” may be a reference to the public notice and comment process for the draft permit and Draft EA. Contrary to the Tribe’s assertion, the EPA issued the draft permit and Draft EA for public notice only after it had received a complete permit application. In doing so, the EPA provided both digital access to, and hard copies of, the draft permit and related materials to the Tribe, to ensure that it had adequate opportunity to review these materials and provide comments to the EPA. A brief timeline of Maher’s permit application and a summary of the public notice and comment process for the draft Maher CAFO permit follows.

The EPA received an initial NPDES permit application from the Maher Facility on September 26, 2023. On February 26, 2024, the EPA sent a letter to Mr. Maher, with a copy to the Tribal Chairwoman and Tribal Environmental Director, noting that the NPDES application was not yet complete and informing Mr. Maher that the CAFO Facility was a new source that is subject to environmental review pursuant to NEPA. In response to this letter and subsequent phone discussions, Mr. Maher submitted revised applications on February 27, 2024, and February 17, 2025. On March 4, 2025, the EPA sent a letter to Mr. Maher, with a copy to the Tribal Environmental Director, determining that the permit application for the CAFO Facility was complete.

As documented in Section 1.6, Table 2 of the Final EA, the EPA worked with the Tribe to hold two community meetings on July 30 and 31, 2025 on the Standing Rock Indian Reservation. One was held at the Grand River Casino and another at Sitting Bull College. The purpose of the meetings was to educate the community about (1) EPA’s role in regulating the Maher Facility, which is a large CAFO on the reservation, and (2) how to submit effective comments on a Draft NPDES permit and Draft EA regarding the Facility. Approximately 40 people attended the two meetings, representing Tribal government staff and the communities surrounding Maher Facility. They included neighbors of the Facility, outside legal counsel for the Tribe, one member of Tribal Council, a professor at Sitting Bull College, a visiting member of the Oglala Sioux Tribe, and Tribal staff from the water resources, environmental, land management and communications departments.

Several months after determining the Maher permit application was complete, on August 26, 2025, the EPA issued public notice of the draft NPDES permit and the Draft EA pursuant to 40 C.F.R. § 124.10. The EPA informed interested parties, including the Tribe, by email of the public notice. The public notice included a link to EPA’s website, which contained the complete permit application, nutrient management plan (NMP), draft permit, and appendices for the Maher CAFO. Those documents remained publicly available on the website and available for online review or download and printing throughout the entire public comment process, and afterwards. In addition, after the EPA informed the Tribe of the public notice, the Tribe requested that EPA send 20 paper copies of the draft permit and related materials to the Tribal Business Council for their review. The EPA complied with this

request and sent the Tribe 20 copies of the draft permit, draft Statement of Basis, and Draft EA. The EPA did not send copies of the full NMP, which is 122 pages long, due to size and cost restraints. However, the EPA noted this in the transmittal package and included a link to the NMP on the EPA's website.

The EPA's review and consideration of these comments did not change the EPA's finding that no significant impacts are anticipated from the EPA's action to issue an NPDES permit to Maher.