

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STATEMENT OF BASIS**

PERMITEE: **Maher Cattle Company, LLC**

FACILITY NAME AND ADDRESS: **Maher Cattle Company, LLC
13031 248th Ave.
Timber Lake, South Dakota 57656**

CAFO NPDES PERMIT No.: **SD-0034768**

RESPONSIBLE OFFICIAL: **Patrick Maher, Owner/Operator**

PERMIT TYPE: **CAFO, New Permit, Minor**

1 Introduction

This statement of basis (SoB) is for the issuance of a new National Pollutant Discharge Elimination System (NPDES) permit (Permit) to the Maher Cattle Company, LLC. The Permit establishes discharge limitations for any discharge of wastewater from the facility (Facility). The SoB explains the nature of the discharges and EPA’s decisions for limiting the pollutants in the wastewater, as well as the regulatory and technical basis for these decisions.

The Facility is located on the Standing Rock Indian Reservation. EPA Region 8 is the permitting authority for facilities located in Indian country, as defined in 18 U.S.C. § 1151, located within Region 8 states and implements federal environmental laws in Indian country consistent with [EPA Policy for the Administration of Environmental Programs on Indian Reservations](#) and the federal government’s general trust responsibility to federally recognized Indian tribes.

2 Major Changes From Previous Permit

Not applicable. This is a new permit.

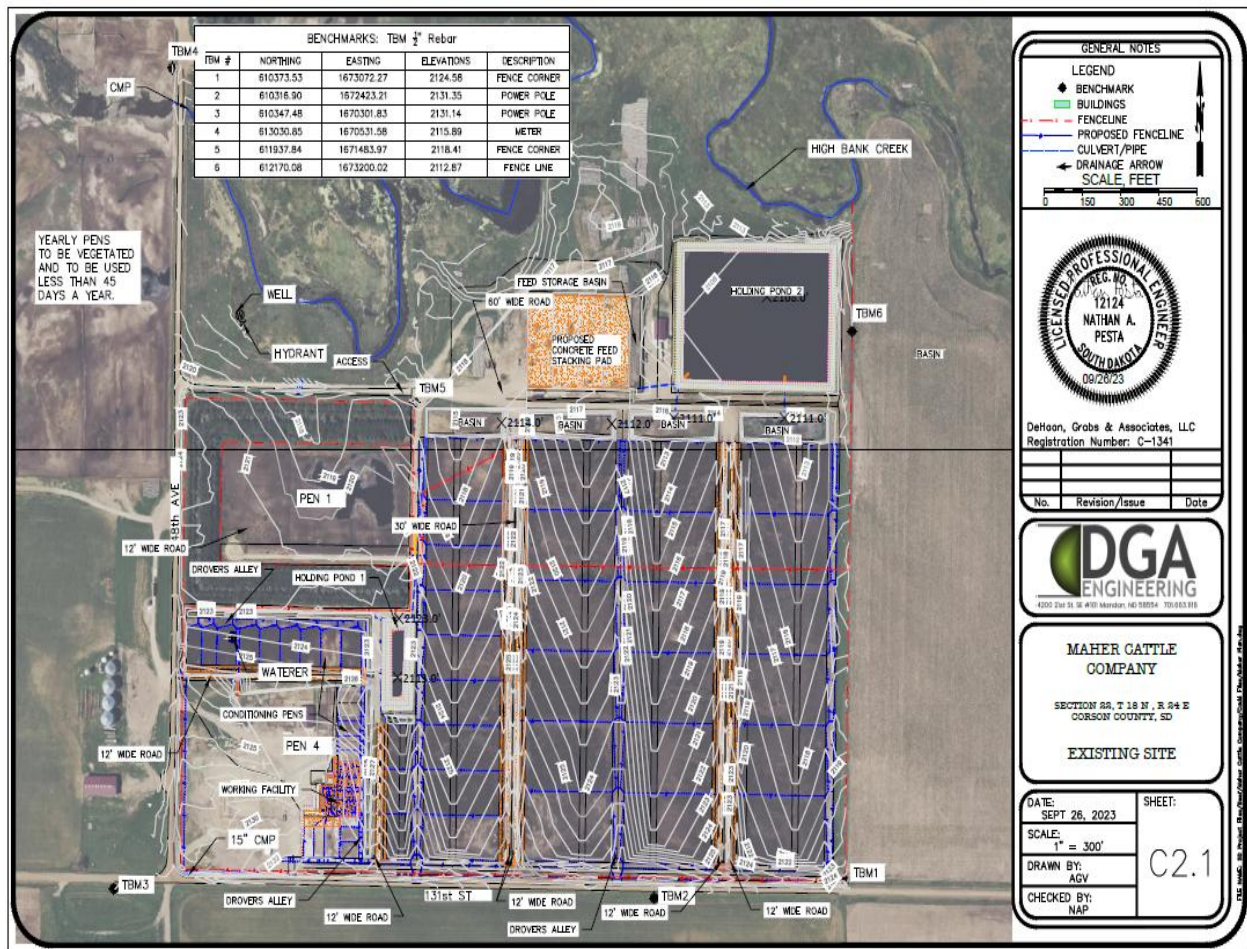
3 Background Information

This Permit is for a beef cattle feedlot located on the Standing Rock Indian Reservation at Section 22, Township 18 North, Range 24 East, latitude 45.508702 and longitude -101.162230, northwest of Timber Lake, Corson County, South Dakota, as shown in Figure 1. This feedlot was constructed in August 2019 and has been in operation since January 2020. This is a new permit and an individual NPDES permit number, SD-0034768, has been assigned for this Facility. In accordance with 40 C.F.R. § 122.21(l)(2)(ii), EPA determined that the Maher Facility is a “new source.” Specifically, the Facility meets the definition of a "new source" in 40 C.F.R. § 122.2,

which includes any facility from which there is or may be a discharge of pollutants and which was built after EPA issued standards of performance under section 306 of the Clean Water Act (CWA) that apply to that source. The issuance of an NPDES permit to a new source is subject to environmental review pursuant to the National Environmental Policy Act, or NEPA. An environmental assessment (EA) was prepared to evaluate the environmental impacts of this draft Permit and to determine whether a finding of no significant impact is warranted or whether preparation of an environmental impact statement is necessary. NEPA § 106(b)(2), 42 U.S.C. § 4336(b)(2); 40 C.F.R. §§ 6.205(a), (b)(2). The EA will be concurrently public noticed with this draft Permit.

The Facility meets the definition of a large, concentrated animal feeding operation (CAFO) (40 CFR 122.23 (4)) as it contains about 130.2 acres of confinement pens with an animal capacity of about 10,000 beef cattle and 3,400 background feeder cattle from the yearling lot. Cattle are confined to open lots within the production area from approximately October to June. Cattle are also within surrounding fields for grazing. The Facility has three holding ponds (Holding pond 1, Holding pond 2, and Yearling pond) for manure, litter, process wastewater, and storm water from a 25-year, 24-hour rainfall event with a total storage capacity of 14,062,702 gallons. The 25-year, 24-hour rainfall event for this area is 3.74 inches of precipitation from the permit application. There are about 6,025 acres of land under the control of the Facility that are available for land application of manure, litter, and process wastewater.

Figure 1. Map of Maher Cattle Facility



4 Permit History

This is the first NPDES permit issued to the Facility.

4.1 Monitoring Data

This is a new permit and there is no discharge monitoring data collected by the Facility yet. However, EPA Region 8 conducted a compliance sampling inspection (CSI) at Maher Cattle, LLC, on June 27, 2023. The objective of the CSI was to gather data upstream of the Facility's discharge point, at the discharge point, and downstream of the discharge point to determine what, if any, impacts the Facility has on High Bank Creek. The CSI report also states, "A [Maher] facility representative indicated that around 600-700 cow/calf pairs are confined to pens approximately 2 miles southwest of the feedlot for around 15-100 days prior to going to fields for grazing." These cow/calf pairs were housed in holding pens as a separate facility from the Maher Facility. EPA also collected samples upstream and downstream of the other cow/calf facility, both of which were upstream of the Maher Facility. Another objective of the CSI was to evaluate compliance with the requirements of the CAFO regulations under 40 CFR Part 122.23.

The CSI sampling locations are shown in Table 1 and Figure 2, and the CSI sampling results are summarized in Table 2 below.

Table 1. High Bank Creek Compliance Sampling Inspection Locations

Site ID	Name	Latitude	Longitude	Description
UP1	Upstream 1	45.49425	-101.19785	High Bank Creek upstream of Maher Cattle and cow calf holding pens
UP2	Upstream 2	45.50381	-101.19163	High Bank Creek upstream of Maher Cattle, but downstream of cow calf holding pens
UP3	Upstream 3	45.50399	-101.17428	High Bank Creek upstream of Maher Cattle, but downstream of cow calf holding pens
DP	Discharge Point	45.50846	-101.16197	Discharge point from the yearling pens into High Bank Creek
DS1	Downstream 1	45.50782	-101.15308	High Bank Creek downstream of Maher Cattle discharge point
DS2	Downstream 2	45.50937	-101.14108	High Bank Creek downstream of Maher Cattle discharge point
DS3	Downstream 3	45.51625	-101.13033	High Bank Creek downstream of Maher Cattle discharge point

Figure 2. High Bank Creek Compliance Sampling Inspection Locations



Table 2. Compliance Sampling Inspection Results from Sampling on June 27, 2023

Site ID	Ammonia as N (mg/L)	Phosphorous (mg/L) a/	Total Kjeldahl Nitrogen (TKN) (mg/L)	Total Nitrogen (TN) (mg/L) b/	Biochemical Oxygen Demand (BOD ₅) (mg/L)	Total Suspended Solids (TSS) (mg/L)	E. Coli (MPN/100 mL) c/
UP1	<0.2	0.35	<5.0	<5.0	5.22	12	14.6
UP2	0.4	1.05	<5.0	<5.0	4.9	6	770.1
UP3	0.38	1.32	5.38	5.38	6.32	11	1046.2
DP	0.44	1.59	5.36	5.36	5.38	13	>2419.6
DS1	0.48	1.67	5.9	5.9	6.65	5	>2429.6
DS2	0.37	1.87	6.18	6.18	7.61	9	>2419.6
DS3	0.51	2.28	6.73	6.73	8.24	4	>2419.6

Note: Nitrite as N, Nitrate + Nitrite as N were below the detection limit of <0.2 mg/L for each of the sampling locations.

a/ Based on the 25th percentile for ecoregion IV, EPA’s recommended WQS Criteria for phosphorous is 0.023 mg/L

b/ TN is the sum of TKN and Nitrate + Nitrite as Nitrogen. Due to the Nitrate + Nitrite as Nitrogen values being below the detection limit, the values for TN are the same as the values for TKN. EPA’s nutrient criteria for TN based on the 25th percentile is 0.56 mg/L.

c/ EPA’s Recreational Water Quality Criteria (RWQC) for E. coli based on the 90th percentile for an estimated illness rate of 36 per 1,000 is 410 MPN/100mL and for an estimated illness rate of 32 per 1,000 the RWQC based on the 90th percentile is 320 MPN/100mL.

Sampling results showed:

- Slight increases in ammonia and BOD₅ downstream compared to upstream. Ammonia concentrations were as low as below detection (<0.2 mg/L) at one upstream location to as high as 0.51 mg/L at one downstream location. BOD₅ concentrations were as low as 4.90 mg/L at one upstream location and as high as 8.24 mg/L at one downstream location.
- Increases in TKN and TP concentrations downstream compared to upstream. TKN was as low as below detection (<0.5 mg/L) at two upstream locations and as high as 6.73 at one downstream location. TP was as low as 0.35 mg/L at one upstream location and as high as 2.28 mg/L at one downstream location;
- *E. Coli* increased from upstream to downstream with a range from 14.6 colony forming units cfu/100 mL at one upstream location (upstream 1, upstream of the separate cow/calf operation), to 770 and 1046 cfu/100 mL (upstream 2 and 3, both downstream of the separate cow/calf pairs operation and upstream of Maher), to exceeding the upper quantification limit of 2,419 cfu/100 mL at the discharge point and all locations downstream of Maher; and
- TSS concentrations generally decreased from upstream to downstream ranging from 12 mg/L to 4 mg/L TSS.

These data show elevated concentrations for *E. coli*, BOD and nutrients (i.e., TKN and TP) associated with impacts from holding pens and discharge from the Facility. *E. coli* concentrations (capped at the upper quantification limit) exceeded EPA's recommended recreational water quality criteria for *E. coli* of 410 cfu/100 mL. Total nitrogen and total phosphorus concentrations exceeded EPA's recommended nutrient criteria of 0.023 mg/L total nitrogen and 0.56 mg/L total phosphorus for rivers and streams in the Great Plains Grass and Shrublands ecoregion where the Facility is located.

4.2 Other Facility History

N/A

5 Description of Receiving Water

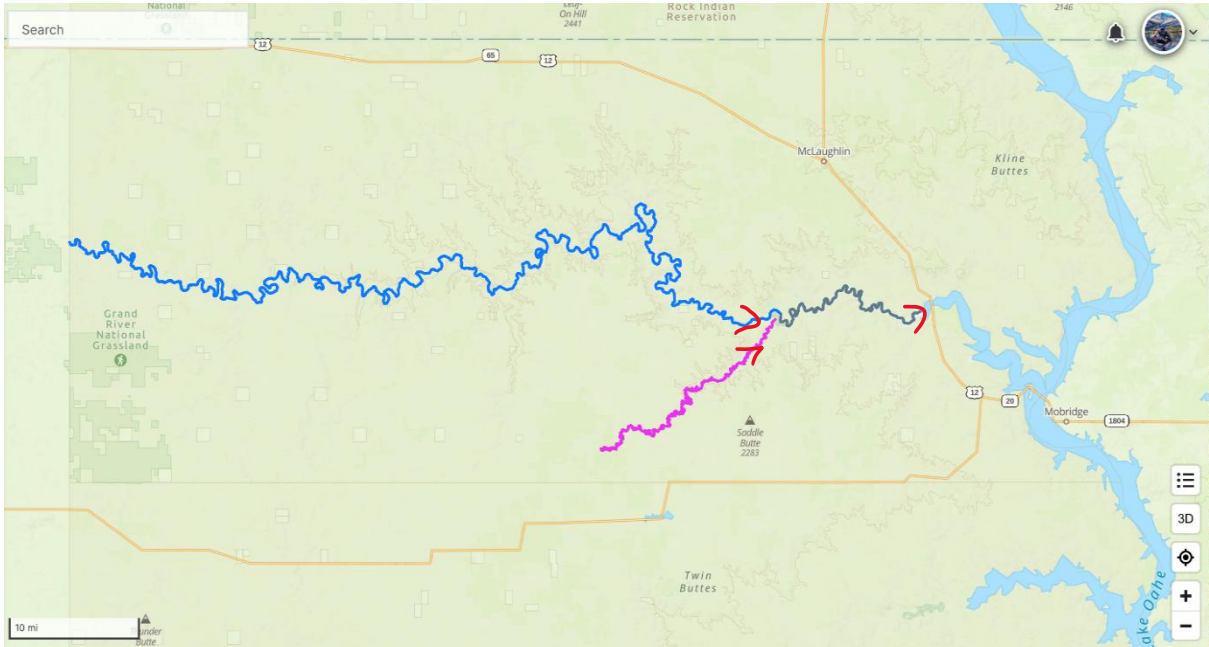
The closest surface water to the Facility is High Bank Creek, shown in Figure 1 above, which is located about 100 feet north of the Holding pond 2. High Bank Creek flows northeast about 17 miles from the Facility to the Grand River. The Grand River flows east about another 12 miles to the Missouri River. The Standing Rock Sioux Tribe does not have Tribal or EPA approved water quality standards. There are no impaired waters or Total Maximum Daily Loads (TMDLs) for High Bank Creek or the Grand River below the Facility.

Minimal Effects to Surface Water and Drinking Water Resources

EPA added this section to this SoB to better explain why surface water and drinking water resources would be minimally affected by the proposed alternative in the Environmental Assessment.

Again, the Maher Facility is located about 17 miles as the crow flies from the confluence of High Bank Creek and the Grand River (about 34 stream miles). The confluence of High Bank Creek and the Grand River is about 12 miles as the crow flies from the Missouri River (about 21 stream miles). The Running Antelope District, Little Eagle, South Dakota is about 20 miles northeast as the crow flies from the Maher facility (about 44 stream miles). The Rock Creek District, Bullhead, South Dakota is about 18 miles north-northeast from the Maher facility as the crow flies (about 27 stream miles) upstream along the Grand River from its confluence with High Bank Creek).

Figure 3. Map depicting High Bank Creek below the Facility (purple), the Grand River from the Standing Rock Sioux boundary to its confluence with High Bank Creek (blue), and the Grand River from its confluence with High Bank Creek to the Missouri River/Lake Oahe (light black).



As explained in EPA Response 3 in the Addendum of this SoB, any discharge from the Facility that meets the 25-year, 24-hour rainfall event threshold is not likely to affect the water quality in High Bank Creek. At the location of Running Antelope District about 44 stream miles downstream from the Maher Facility, pollutants would be naturally attenuated in the dynamic water column after traveling such a long distance and further diluted by the Grand River. The Rock Creek District location is located along the Grand River, about 18 miles north-northeast (NNE) from Maher as the crow flies and about 27 stream miles *upstream* of the confluence of the Grand River and High Bank Creek. As a result, pollutants discharged from the Maher Facility cannot reach the Rock Creek District and would not pose a water quality concern to these communities.

EPA also received comments from people living in the Running Antelope District about impacts to drinking water sources. The commenters did not provide any specific wells or locations of drinking water intakes that may be affected by the EPA's issuance of the NPDES permit, and a comment from the Tribe about potential drinking water impacts in general did not mention a particular location. In the event that pollutants are discharged during a 25-year, 24-hour rainfall event, they would pose an insignificant water quality concern, because as discussed above, water travels a long distance from Maher to the Running Antelope District, undergoing instream dilution and attenuation. The Rock Creek District is upstream from Maher, along the Grand River, and it would not see a water quality effect from the Facility.

To evaluate the presence of any domestic water wells downstream of the Facility and with proximity to High Bank Creek, EPA reviewed the State of South Dakota's Well Completion Report GIS site (<https://apps.sd.gov/nr68welllogs/>). EPA reviewed the full length of High Bank Creek and the Grand River from the Maher Facility to the Missouri River. The GIS site identified six wells downstream of Maher within ½ mile of High Bank Creek classified as domestic wells. There were no wells classified as domestic within ½ mile of the Grand River downstream from its confluence with High Bank Creek, including in the town of Little Eagle. Mapping indicates that five of the wells along High Bank Creek are situated at an elevation at least 30 feet above the level of the creek. At those elevations, there is no way for water from High Bank Creek conveying pollutants from the Facility to reach the well heads and inundate these water wells, so there is likely to be no direct impact from Maher on these wells. There is one well located in the flood plain at the confluence of the Grand River and High Bank Creek. This well is approximately 870 feet from the Grand River and ¼ mile from High Bank Creek and the well head is situated about 6 feet above the elevation of the creek. It is possible this well could be inundated during a highwater event on either the River or the Creek. As a result, there is the potential for surface water intrusion into this well during high-water events, and thus the possibility that pollutants attributable to the Maher Facility could directly impact this well. However, the risk of surface water intrusion into this well is pre-existing and as described in EPA Response 2 in the Addendum of this SoB, any pollutants from the Facility would be extremely diluted in the event of a high-water event of this magnitude and would thus have minimal additional effect beyond the pre-existing risk of contamination of the well via intrusion.

Additionally, EPA conducted an internet search for information on the groundwater hydrology of High Bank Creek to determine if there is any risk of discharges from the Maher Facility infiltrating into groundwater and then into the six wells noted above; however, EPA was unable to identify any hydrologic data for the creek. Nonetheless, EPA has concluded that infiltration impacts are unlikely because any discharge from the Facility would occur only during rare, large precipitation events. Therefore, any pollutants would be highly diluted, as explained in EPA Response 2 in the Addendum of this SoB, and would be moving relatively quickly with a large volume of runoff and thus have minimal opportunity for infiltration.

6 Permit Limitations

6.1 Technology Based Effluent Limitations (TBELs)

Section 301 of the CWA prohibits the discharge of pollutants by any point source into waters of the U.S. except in accordance with a permit. It also requires that dischargers comply with effluent limitations necessary to meet water quality standards. The NPDES permit regulations at 40 CFR 122.44(a) and (d) implement Section 301 by requiring that each NPDES permit issued under Section 402 include conditions that meet technology-based effluent limitations and standards, as well as water quality standards.

6.1.1 Production Area

The Facility meets the definition of an animal feeding operation (AFO) in 40 CFR 122.23(b)(1), because it is a feedlot where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the feedlot. The Facility further meets the definition of a Large CAFO in 40 CFR 122.23(b)(4), because it stables or confines at least 1,000 cattle.

Large CAFOs are subject to the effluent guidelines found at 40 CFR Part 412, and the Facility is subject to Subpart C (Dairy Cows and Cattle Other Than Veal Calves).

Pursuant to the CWA Section 402(a)(2) [40 CFR 122.44(k)(3)], best management practices (BMPs) are being proposed in the Permit. These practices are reasonably necessary either to achieve effluent limitations or to carry out the CWA's goals of eliminating the discharge of pollutants as much as practicable and to maintain water quality.

In accordance with 40 CFR 412.31, there shall be **no discharge** of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided below:

- a. The production area must be designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event.
The language of section 412.31 and sections II.A.1 & 2 of the permit references "construction" and modification of production area storage capacity. This Permit does not authorize such construction; it only establishes requirements that constructed storage capacity must meet. If the Facility seeks to construct or modify storage capacity that disturbs greater than 1 acre of land, it needs to seek coverage under a construction stormwater permit such as the 2021 Construction General Permit.
- b. The production area storage volume must be designed, constructed, operated and maintained to contain all manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the Facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the Facility; 25-year, 24-hour runoff from the Facility's drainage area; residual solids after liquids have been removed; necessary freeboard and depth marker requirements have been met; required corrective actions for deficiencies found during inspections are made as soon as possible; mortality handling requirements have been met; and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. [40 CFR 412.31 and 412.37(a) and (b)]

The wastewater lagoon information presented in Section 3 of the permit application shows the wastewater lagoons are capable of handling the runoff and direct precipitation during a 25-year, 24-hour rainfall event. Section 7 of the permit application

shows the holding ponds meet the seepage guidelines of the National Engineering Handbook (NEH), Part 651, Agricultural Waste management Field Handbook (AWMFH), Chapter 10, Appendix 10D.

- c. Visual inspection requirements of the production area, depth marker requirements, corrective action requirements, mortality handling requirements, and recordkeeping requirements are met as required by 40 CFR 412.37(a) and (b) including:
 - i. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures. [40 CFR 412.37(a)(1)(i)]
 - ii. Daily inspections of all water lines, including drinking water and cooling water lines. [40 CFR 412.37(a)(1)(ii)]
 - iii. Weekly inspections of the manure, litter, and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with part d below, and 40 CFR 412.37(a)(2). [40 CFR 412.37(a)(1)(iii)]
 - iv. Installation of a depth marker in all open surface liquid impoundments which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. [40 CFR 412.37(a)(2)]
 - v. Correction of any deficiencies that are identified as a result of visual inspections as soon as possible. [40 CFR 412.37(a)(3)]
 - vi. No disposal of animal mortalities in any liquid manure or process wastewater systems and handling of animal mortalities in such a way as to prevent discharge of pollutants to surface water. [40 CFR 412.37(a)(4)]
 - vii. Complete records of maintenance for the production area, in accordance with 40 CFR 412.37(b). Records must be maintained on-site at the permitted CAFO for 5 years from the date they are created and must include the records identified in the Operation and Maintenance section of Table IV-A of the Permit.

6.1.2 Land Application Areas under the Control of the CAFO Owner/Operator

40 CFR 412.4(c)(1) requires the Facility to develop and implement a Nutrient Management Plan (NMP). The requirements of the NMP include:

- a. Develop and implement a NMP that is based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field. [40 CFR 412.4(c)(1)]

- b. Address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. [40 CFR 412.4(c)(1)]
- c. Determine application rates for manure, litter, and process wastewater that minimize phosphorus and nitrogen transport from the field to surface waters in accordance with the technical standards for nutrient management established by EPA. [40 CFR 412.4(c)(2)]
- d. In addition to the above technology-based effluent limitations for the land application areas, EPA has established requirements based on best professional judgement (BPJ) for identification of site specific conservation practices to control runoff of pollutants to waters of the U.S. [40 CFR 122.42(e)(1)(vi)]

The reference in paragraph II.A.3.b. of the Permit to the South Dakota Natural Resources Conservation Service (NRCS) is a reference to the South Dakota office of the NRCS, which is a federal agency within the U.S. Department of Agriculture that provides technical assistance to farmers, ranchers and other private landowners and managers.

- e. Establishment of protocols to land apply manure, litter, and process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.42(e)(1)(vii)]
- f. Analyze manure a minimum of once annually for nitrogen and phosphorus content and soil a minimum of once every 5 years for phosphorus content. [40 CFR 412.4(c)(3)]
- g. Equipment used for land application of manure, litter, or process wastewater must be inspected periodically for leaks. [40 CFR 412.4(c)(4)]
- h. Do not apply manure, litter, or process wastewater closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited. [40 CFR 412.4(c)(5) and 40 CFR 412.4(c)(5)(i)]
- i. Complete on-site records including the site specific NMP must be maintained to document implementation of all required land application practices. [40 CFR 412.37(b)]
- j. Areas shall be identified that, due to topography, activities or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute

pollutants to water of the United States, measures used to limit erosion and pollutant runoff shall be identified and implemented in the NMP. [professional judgment]

- k. Irrigation Control: Irrigation systems shall be managed so as to reduce or minimize (a) ponding or puddling of wastewater on land application fields, (b) contamination of ground and surface water and (c) the occurrence of nuisance conditions such as odors and flies. [professional judgment]

The following additional prohibitions shall apply:

- a. There shall be no discharge of manure, litter, or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO, except where it is an agricultural storm water discharge. Where manure, litter, or process wastewater has been applied in accordance with the CAFO's site specific NMP, a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.
- b. Manure and process wastewater shall not be applied to frozen, snow-covered, or saturated soil. If application to frozen, snow-covered, or saturated soil is absolutely necessary, the operator shall notify the permitting authority of any deviation from the NMP. [40 CFR 122.23(e)]

6.2 Water Quality-based Effluent Limitations and Standards

The Facility would discharge to High Bank Creek. The receiving water is within the Standing Rock Indian Reservation. The Standing Rock Sioux Tribe does not have EPA-approved water quality standards under Section 303(c) of the CWA. In those cases where technology-based effluent limitations are not sufficient to meet water quality standards, the permitting authority must develop more stringent water quality-based effluent limitations (WQBELs) on a site-specific basis. NPDES permits for CAFOs may include BMPs as WQBELs. [40 CFR § 122.44(k)]

6.2.1 Production Area

The TBELs derived from the effluent limitation guidelines discussed in section 6.1.1 are adequate protection for waters of the United States and Tribal waters for the production area.

6.2.2 Land Application Areas under the Control of the CAFO Owner/Operator

Discharges from land application areas, except where it is an agricultural storm water discharge, are subject to NPDES requirements, including WQBELs. Federal regulations [40 CFR 122.44(d)] require permit limitations to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards. In most instances, a CAFO that meets technology-based permit

limits requiring manure to be applied at appropriate agronomic rates will eliminate all or most dry weather discharges. However, if such discharges remain, the permitting authority must determine the need for additional WQBELs to meet applicable water quality standards based on the circumstances of each particular case (see the Preamble to the Final Rule, 73 FR 70,418 (November 20, 2008)).

This Permit prohibits all dry weather discharge from the land application area. This includes, but is not limited to, the dry weather discharge of irrigation water not associated with nutrient application on fields where manure was previously applied.

This Permit requires the Facility to conduct visual inspections during and after land application of manure, litter, or process wastewater on land application areas subject to a land application setback or compliance alternative per Part II.A.3.h of the Permit. The Permit prohibits land application closer than 100 feet to any down-gradient surface waters or conduit to surface water. The Permittee may implement a 35-foot vegetated buffer as a compliance alternative to the 100-foot setback or may implement an alternative compliance practice that they have demonstrated to provide equivalent or better pollutant reductions. The setback requirement and alternative compliance practices are intended to minimize the potential runoff of nutrients and associated pollutants from land application sites that are close to down-gradient surface waters or conduits to surface water and, based on proximity, pose an increased risk of impacting surface waters from manure application. For those land application areas, this Permit requires visual inspections during and after land application to ensure the setback requirement or compliance alternative is being maintained and functioning as intended, and to identify any potential dry weather discharges.

The visual inspections will be timed based on the land application type and site conditions such that inspections occur when any potential discharges are most likely. For a land application event that spans multiple days, “during” means daily throughout the event. The inspection that occurs after the end of the event is intended to detect any potential dry weather discharges that may have occurred after the visual inspection that occurred during the land application event. Therefore, the inspection should be conducted as soon as is reasonably possible after the end of the event when a discharge is potentially still active and could be monitored. This will also ensure that any potential receiving water impacts can be assessed and downstream users can be notified, if necessary, before they are affected. If a dry weather discharge is discovered, then the CAFO must monitor the discharge as discussed in Part IV.C.1 of the Permit.

6.3 Antidegradation

The Tribe does not have an antidegradation policy because they do not have TAS for WQS. There is no antidegradation requirement.

6.4 Anti-Backsliding

Anti-backsliding requirements at 40 CFR § 122.44(l)(1) do not apply, because this is the first permit issued to the Facility.

7 Special Conditions

7.1 Nutrient Management Plan

The completed Nutrient Management Plan (NMP) was submitted to EPA with the permit application seeking coverage under this Permit, as required. The Permittee shall implement its NMP upon authorization under this Permit. [40 CFR 122.42(e)(5)]

7.1.1 NMP Terms and Conditions

The Permittee must implement its NMP upon Permit authorization. The NMP must specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations and special conditions in this CAFO permit. The NMP must be developed in accordance with the Natural Resource Conservation Service (NRCS) Conservation Practice Standard Code 590 (Nutrient Management). As provided in 40 CFR 123.36, these technical standards must be consistent with 40 CFR 412.4(c)(2), which in part provides that such standards must operate to minimize the transport of nutrients to surface waters. The NMP accomplishes this primarily by restricting the quantity of nutrients that can be land applied and matching that quantity with the nutrient needs of the crops being grown on the fields used for such land application. [40 CFR 122.42(e)(5)]

EPA reviewed the NMP submitted by the Facility. EPA used the NMP to evaluate whether to incorporate site-specific permit terms would be incorporated as terms and conditions of the Permit. [40 CFR 122.42(e)(5)]

The Permit specifies that the NMP must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, the NMP must meet nine minimum measures required under 40 CFR 122.42(e)(1)(i-ix) and specified in this Permit. These requirements include the following:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. [40 CFR 122.42(e)(1)(i)]
- b. Ensure that clean water is diverted, as appropriate, from the production area. [40 CFR 122.42(e)(1)(iii)]
- c. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants. [40 CFR 122.42(e)(1)(v)]
- d. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of

the United States and specifically, to minimize the runoff of nitrogen and phosphorus. [40 CFR 122.42(e)(1)(vi)]

- e. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. [40 CFR 122.42(e)(1)(vii)]
- f. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.42(e)(1)(viii)]

Application rates will be expressed in the NMP Using a narrative rate approach. This approach expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied according to the following specifications:

1. The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the NMP, in chemical forms determined to be acceptable to EPA, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph (B) below of this section); the realistic yield goal for each crop or use identified for each field, and the nitrogen and phosphorus recommendations from sources specified by EPA for each crop or use identified for each field. In addition, the terms include the methodology by which the NMP accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the NMP, credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field, the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.
2. The terms of the NMP include alternative crops identified in the Facility's NMP that are not in the planned rotation. Where the Facility includes alternative crops in its NMP, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field and the NMP must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by EPA for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied

must be determined in accordance with the methodology described in paragraph a above of this section.

3. The following projections must be included in the NMP, but are not terms of the NMP: the Facility's planned crop rotations for each field for the period of permit coverage, the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the NMP.
4. The Facility must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph a above of this section before land applying manure, litter, and process wastewater and must rely on the following data:
 - i. a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required in paragraph a above of this section, and for phosphorus, the result of the most recent soil test conducted in accordance with the NMP in Appendix A; and
 - ii. the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied. [40 CFR 122.42(e)(5)(ii)]
- g. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities. [40 CFR 122.42(e)(1)(ii)]
- h. Prevent the direct contact of animals confined or stabled at the Facility with waters of the United States. [40 CFR 122.42(e)(1)(iv)]
- i. Identify and maintain all records necessary to document the development and implementation of the NMP and compliance with the permit. [40 CFR 122.42(e)(1)(ix)]

The NMP shall be signed by the owner/operator or other signatory authority in accordance with Part VI.E (Signatory Requirements) of this Permit. [40 CFR 122.41(k)]

A current copy of the NMP shall be kept on-site at the permitted Facility in accordance with Part IV.C of the Permit and provided to the permitting authority upon request. [40 CFR 412.37(c)]

7.1.2 Changes to the NMP

- a. The Permit recognizes that the Permittee may need to make changes to its NMP. When the Permittee makes changes to the NMP previously submitted to EPA, the Permittee must provide EPA with the most current version of the NMP and identify changes from the previous version. [40 CFR 122.42(e)(6)(i)]
- b. EPA will review the revised NMP. If EPA determines that the changes to the NMP require revision of the terms of the NMP incorporated into the Permit, EPA must then determine whether such changes are substantial. [40 CFR 122.42(e)(6)(ii)]. Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to: [40 CFR 122.42(e)(6)(iii)]
 1. Addition of new land application areas not previously included in the NMP, except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the Permittee complies with such terms when applying manure, litter, and process wastewater to the added land; [40 CFR 122.42(e)(6)(iii)(A)]
 2. Changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop; [40 CFR 122.42(e)(6)(iii)(B)]
 3. Addition of any crop or other uses not included in the terms of the NMP; [40 CFR 122.42(e)(6)(iii)(C)]
 4. Changes to site specific components of the NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. [40 CFR 122.42(e)(6)(iii)(D)]
- c. If the changes to the terms of the NMP are not substantial, EPA will include the revised NMP in the Permit record, revise the terms of the Permit based on the site specific NMP, and notify the Permittee of any changes to the terms of the permit based on revisions to the NMP. [40 CFR 122.42(e)(6)(ii)(A)]
- d. If EPA determines that the changes to the terms of the NMP are substantial, EPA will notify the public, make the proposed changes and make the information submitted by the Permittee available for public review and comment, and respond to all significant comments received during the comment period. EPA may require the Permittee to further revise the NMP, if necessary. Once EPA incorporates the revised terms of the

NMP into the Permit, EPA will notify the Permittee of the revised terms and conditions of the Permit. [40 CFR 122.42(e)(6)(ii)(B)]

7.2 Facility Closure

Abandoned or improperly closed CAFOs pose a pollution threat to surface water and groundwater that can be significant for large facilities and increases due to a lack of proper maintenance and management.

This Permit includes specific closure requirements for lagoons and other surface impoundments, as well as for other manure, litter and process wastewater storage and handling facilities. Under this Permit, the Facility, lagoons, and other surface impoundments may not be abandoned. Other manure, litter and process wastewater storage and handling facilities must be properly closed as promptly as practicable upon ceasing operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of 12 consecutive months must be properly closed unless the Facility is financially viable and intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the Permittee must notify EPA of the action taken, and must conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the Permittee shall notify EPA and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with NRCS Conservation Practice Standard Code 360 (Closure of Waste Impoundments). Consistent with this standard, the Permittee must remove all waste materials to the maximum extent practicable and dispose of them in accordance with the Permittee's NMP, unless otherwise authorized by EPA.

Closure of all other manure, litter, or process wastewater storage and handling structures must occur as promptly as practicable after the Permittee has ceased to operate, or, if the Permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the Permittee must remove all manure, litter, or process wastewater and dispose of it in accordance with the Permittee's NMP or document its transfer from the permitted Facility in accordance with off-site transfer requirements specified in this Permit, unless otherwise authorized by EPA. [Section 4.3 of the CAFO permit writers' manual]

7.3 Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

Under this Permit, where Facility-generated manure, litter, or process wastewater is sold or given away, the Permittee must comply with specific requirements that document the transaction and promote proper management. These include the following conditions:

- a. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- b. Maintain records of the name(s) and address(es) of the recipient(s);
- c. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
- d. These records must be retained on-site, for a period of 5 years, and be submitted to EPA upon request. [40 CFR 122.42(e)(3)]

This Permit does not establish requirements for off-site management of Facility generated manure, litter, or process wastewater. However, EPA can use the documentation specified above to ensure proper management of such materials as appropriate.

8 Discharge Monitoring and Notification Requirements

8.1 Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application

This Permit requires that in the event of a discharge of pollutants to a water of the United States, the Permittee is required to make immediate oral notification within 24-hours to EPA Region 8, Superfund and Emergency Management Division at (303) 293-1788; Region 8's NPDES and Wetlands Enforcement Section at (800) 227-8917; and Standing Rock Sioux Tribe at (701) 854-3823. Additionally, the Permittee shall notify EPA in writing within five (5) days of the discharge from the Facility. In addition, the Permittee must keep a copy of the notification submitted to EPA together with the other records required by this Permit. The discharge notification must include: 1) a description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged; 2) the period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge; and 3) the signed certification statement required by the Permit. This reporting requirement is a standard permit condition under 40 CFR 122.41(l)(6) and 40 CFR 122.22(b). Note that runoff that meets the criteria of the agricultural stormwater exemption does not constitute a point source discharge.

8.2 Monitoring Requirements for All Discharges from Retention Structures

This Permit provides that in the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by this Permit, all discharges must be sampled and analyzed, and an estimate of the volume of the release and the date and time must be recorded. [40 CFR 122.41(j)]

Samples must, at a minimum, be collected and analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, *E. coli*, five-day biochemical oxygen demand (BOD₅), total suspended solids, pH, and temperature. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, as required in 40 CFR § 122.41(j), unless another method is required under 40 CFR subchapters N or O.

Samples shall consist of grab samples collected from the overflow or discharges from the retention structure. A minimum of one sample shall be collected from the initial discharge (within 30 minutes). Grab samples are required in the first 30 minutes to ensure a representative sample is collected. Grab samples are appropriate to monitor discharge that does not discharge on a continuous basis and the water quality is expected to be consistent.

This Permit requires monitoring data that is representative of the discharge across time. EPA Region 8 has modified the monitoring requirement for retention structures to require daily monitoring for the first 7 days of a discharge, and then weekly monitoring thereafter, in addition to the initial discharge (within 30 minutes). Thus, for example, if a discharge were to last for 3 days, the Facility would need to collect 1 sample each day for a total of 3 samples and if a discharge were to last for 3 weeks, the Facility would need to collect 1 sample each day for the first week and 1 sample each week for the second and third weeks, for a total of 9 samples. This monitoring scheme ensures that EPA Region 8 will have robust monitoring data for all short-term discharges and will be able to track any subsequent fluctuations in pollutants in wastewater discharges that persist for longer periods.

If conditions are not safe for sampling, the Permittee must provide documentation of why samples could not be collected and analyzed. For example, the Permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the Permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred. [40 CFR 122.41(j)]

8.3 Monitoring Requirements for High Bank Creek Locations

EPA's June 27, 2023, compliance sampling inspection results during a discharge event are discussed in section 4.1 above and indicate that there was evidence of discharges occurring from this Facility to High Bank Creek. The permit application Section 2.A.6 indicates that the "Holding pond 2 is located approximately 100 feet south of High Bank Creek." The permit application Section 2.A.7. indicates that "The geological investigation conducted by DeHaan,

Grabs & Associates LLC found no ground water 3’ below the bottom surface.” Due to the evidence of discharges, close proximity, and potentially shallow ground water level to High Bank Creek, this Permit requires monitoring at locations UP3, DP, and DS1 as outlined in Table 3. Quarterly monitoring is required to characterize the receiving waters and any impacts from discharges across seasonal variations each year. The monitoring requirements for these locations are outlined in Table 4. The monitoring data will be evaluated to determine future permit actions and whether any changes in permit limitations or continued monitoring are needed for the Facility. Monitoring results for High Bank Creek locations at UP3, DP, and DS1 shall be submitted with the annual report. Grab samples are appropriate to monitor discharge that does not discharge on a continuous basis and the water quality is expected to be consistent [40 CFR 122.41(j)]

Table 3. Monitoring Locations for High Bank Creek (UP3, DP, and DS1)

UP3	Upstream 3	45.50399	-101.17428	High Bank Creek upstream of the production area
DP	Discharge Point	45.50846	-101.16197	Monitoring point near yearling pens into High Bank Creek where discharge was observed in 2023
DS1	Downstream 1	45.50782	-101.15308	High Bank Creek downstream of the production area

Table 4. Monitoring Requirements for High Bank Creek Locations (UP3, DP, and DS1)

Sampling Parameters	Monitoring Frequency <u>d/</u>	Sample Type <u>a/</u>	Data Value Reported on Annual Report <u>b/</u>
Ammonia as N (mg/L)	Quarterly	Grab	All Quarterly Results
Nitrate as N (mg/L)	Quarterly	Grab	All Quarterly Results
Nitrite as N (mg/L)	Quarterly	Grab	All Quarterly Results
TKN (mg/L)	Quarterly	Grab	All Quarterly Results
TN (mg/L) <u>c/</u>	Quarterly	Calculate	Calculated Quarterly Results
Total Phosphorus (mg/L)	Quarterly	Grab	All Quarterly Results
BOD ₅ (mg/L)	Quarterly	Grab	All Quarterly Results
TSS (mg/L)	Quarterly	Grab	All Quarterly Results
<i>E. Coli</i> (MPN/100 mL)	Quarterly	Grab	All Quarterly Results

a/ See Part VII of the Permit for definition of terms.

b/ Refer to the Permit for requirements (Part V) regarding how to report data on the Annual Report.

c/ TN is the sum of TKN and Nitrate + Nitrite as Nitrogen

d/ Quarterly monitoring shall be representative for seasonal variation per year (e.g. one sample shall be collected during Summer, Fall, Winter, and Spring)

9 Compliance Responsibilities and General Requirements

40 CFR § 122.41(e) requires the Permittee to properly operate and maintain at all times, all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Under this Permit, the Permittee shall also inspect, monitor, and record the results of such inspection and monitoring in accordance with Table 5: [40 CFR 122.42(e)(2) and (3); 40 CFR 412.37(b) and (c)]

The Permittee shall maintain a log recording information obtained during all inspections and comply with the record keeping requirements below.

Table 5. NPDES Large CAFO Permit Record Keeping Requirements

Activity	Description	Units	Frequency
Permit and Nutrient Management Plan	The CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice.	N/A	Maintain at all times
Permit and Nutrient Management Plan	The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application. In addition, records must be maintained on the development and implementation of the NMP is in accordance with the minimum practices in Part III. A.1.	N/A	Maintain at all times
Soil and Manure/Waste water Nutrient Analysis	Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content. ¹	ppm Pounds/ton	At least annually

Activity	Description	Units	Frequency
Soil and Manure/Waste water Nutrient Analysis	Analysis of soil in all fields where land application activities are conducted to determine phosphorus content. ¹	ppm	At least once every 5 years
Operation and Maintenance	Visual inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures including the inspection date, who conducted the inspection, and deficiencies	N/A	Weekly
Operation and Maintenance	Visual inspection of all water lines including the inspection date, who conducted the inspection, and deficiencies	N/A	Daily ²
Operation and Maintenance	Documentation of depth of manure and process wastewater in all liquid impoundments including the date and who made the measurement	Feet	Weekly
Operation and Maintenance	Documentation of all corrective actions taken and dates of corrective actions. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Operation and Maintenance	Documentation of animal mortality handling practices (such as burial, landfill, incineration, etc.)	N/A	As necessary
Operation and Maintenance	Design documentation for all manure, litter, and wastewater storage structures including the following information: <ul style="list-style-type: none"> • Volume for solids accumulation • Design treatment volume • Total design storage volume³ • Days of storage capacity 	Cubic yards/gallons Cubic yards/gallons Cubic yards/gallons Days	Once in the permit term unless revised

Activity	Description	Units	Frequency
Operation and Maintenance	Documentation of all overflows from all manure and wastewater storage structures including: <ul style="list-style-type: none"> • Date and time of overflow • Estimated volume of overflow • Analysis of overflow (as required in Part IV.B.1. of the permit) 	Month/day/year Total gallons ppm	Per event Per event Per event
Land Application	For each application event where manure, litter, or process wastewater is applied, documentation of the following by field: <ul style="list-style-type: none"> • Date of application • Method of application • Weather conditions at the time of application and for 24 hours prior to and following application • Total amount of nitrogen and phosphorus applied⁴ 	Month/day/year N/A N/A Pounds/acre	Daily Daily Daily Daily
Land Application	Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Land Application	Documentation of the actual crop planted and actual yield for each field	Bushel/acre	Seasonally
Land Application	Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Land Application	Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised

Activity	Description	Units	Frequency
Land Application	Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Land Application	Documentation of manure application equipment inspection including inspection dates	N/A	Seasonally
Land Application	Documentation of visual inspections of potential land application area discharge locations and land application setback(s) or compliance alternative(s) specified in Part II.A.3.h and Part IV.c.1.	N/A	For each land application event and field where applied
Manure Transfer	For all manure transfers the CAFO must maintain the following records: <ul style="list-style-type: none"> • Date of transfer • Name and address of recipient • Approximate amount of manure, litter, or wastewater transferred 	N/A N/A Tons/gallons	As necessary As necessary As necessary

¹ Refer to the State and/or Tribal nutrient management technical standard for the specific analyses to be used.

² Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. The Permittee may choose to maintain a daily log or maintain weekly records documenting that required daily inspections have been completed.

³ Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids.

⁴ Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.

10 Annual Reporting

Under this Permit, the Permittee must submit an annual report to EPA by March 31st of each year. The requirement and criteria for the annual report are specified in 40 CFR 122.42(e)(4).

The annual report must include the following information:

- a. The number and type of animals, whether in open confinement or housed under roof;
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the NMP;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
- g. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;
- h. Actual crops planted and actual yields for each field for the preceding 12 months;
- i. Results of all samples of manure, litter or process wastewater for nitrogen and phosphorus content for manure, litter, and process wastewater that was land applied;
- j. Results of calculations conducted in accordance with Part III.A.1.f. (for the Narrative Rate Approach);
- k. Amount of manure, litter, and process wastewater applied to each field during the preceding 12 months;
- l. This Facility uses a narrative rate approach to address rates of application. Include:
 - The results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months.
 - The data used in calculations conducted in accordance with Part III.A.1.f of the Permit.

- The amount of any supplemental fertilizer applied during the preceding 12 months; and
- m. Monitoring results for High Bank Creek locations UP3, DP, and DS1.

11 Endangered Species Considerations

The Endangered Species Act of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS), that any Federal action carried out by the Agency is not likely to jeopardize the continued existence of any endangered species or threatened species (together, “listed” species), or result in the adverse modification or destruction of habitat of such species that is designated by the FWS as critical (“critical habitat”). See 16 U.S.C. § 1536(a)(2), 50 CFR Part 402. When a Federal agency’s action “may affect” a protected species, that agency is required to consult with the FWS (formal or informal) (50 CFR § 402.14(a)).

The U.S. Fish and Wildlife Information for Planning and Conservation (IPaC) website (<https://ecos.fws.gov/ipac/>) was accessed on July 28, 2025, to determine federally-listed Endangered, Threatened, Proposed and Candidate Species for the area near the Facility. The IPaC Trust Resource Report findings are provided in the table below. The designated area utilized was identified in the IPaC search and covers the entire Maher Cattle site acreage in Corson County, South Dakota, and the receiving water that falls within and downstream of the immediate Facility site area about 20 miles.

Table 1. IPaC Federally listed Threatened and Endangered Species

Species	Scientific Name	Species Status	Designated Critical Habitat
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Endangered	No effect. No critical habitat has been designated for this species.
Piping Plover	<i>Charadrius melodus</i>	Threatened	No effect. There is final critical habitat for this species. Action area does not overlap the critical habitat.
Rufa Red Knot	<i>Calidris canutus rufa</i>	Threatened	No effect. There is proposed critical habitat for this species. Action area does not overlap the critical habitat.
Whooping Crane	<i>Grus americana</i>	Endangered	No effect. There is final critical habitat for this species. Action area does not overlap the critical habitat.
Monarch Butterfly	<i>Danaus plexippus</i>	Proposed Threatened	Not likely to jeopardize the continued existence of any proposed species or result in

			the destruction or adverse modification of proposed critical habitat
Suckley's Cuckoo Bumble Bee	<i>Bombus suckleyi</i>	Proposed Endangered	Not likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat
Western Regal Fritillary	<i>Argynnis idalia occidentalis</i>	Proposed Threatened	Not likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat

11.1 Effects Analysis

The EPA has concluded that its proposed issuance of the Permit will have no effect on listed species or their designated critical habitat. The Facility is already constructed and has been operating without an NPDES permit since 2020. This Permit does not authorize new construction at the Facility location but instead brings the Facility into compliance with the CWA. The Permit includes requirements to control discharges from the CAFO production area and requirements to control discharges from land application areas. Each are discussed separately below.

CAFO Production Area

The Facility has constructed 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. The only discharges that are permitted from the CAFO production area are runoff and direct precipitation from storm events that exceed a 25-year, 24-hour rainfall event. Such discharges, therefore, would be in the context of a high-volume storm event in the High Bank Creek drainage, meaning that there would be significant volumes of natural runoff in the receiving water that would dilute any potential discharges from the CAFO production area. As a result, these discharges would have no effect on listed species that may be present in the creek. Such discharges could not affect critical habitat because there is none that overlaps with the action area.

Land Application Areas

The Facility has 6,025 acres of land under its control that are available for land application of manure, litter, and process wastewater. The Facility has developed a NMP that identifies and describes practices that will be implemented to assure compliance with the effluent limitations and special conditions of this Permit, including, among others, chemical handling practices, manure and soil testing, and land application requirements. These practices ensure that the

only materials being land applied are manure and wastewater, with no additional chemicals or pollutants. Land application will only occur during warmer weather months when the ground is not frozen. Liquid wastes can be applied via irrigation or sprinkler, solid wastes can be applied via broadcast using a spreader machine. When land application fields are not vegetated, the NMP requires mechanical incorporation (e.g., tilling into the soil using equipment like plows or disks) of the applied wastewater or solids. This would typically occur in early spring or late fall. When land application fields are vegetated, mechanical incorporation of the applied wastewater or solids is not required. This would occur during the growing season, which is typically late spring through early fall. The Permit prohibits discharges from land application activities.

The northern long-eared bat (NLEB) typically overwinters and breed in caves or mines and spend the remainder of the year in forested habitats. There are no known caves, mines or forested areas in the vicinity of the land application fields, thus land application will not impact habitat for the NLEB. The NLEB emerges at dusk to hunt the forest understory and feed on moths, flies, leafhoppers, caddisflies, beetles and arachnids that it catches midflight or gleans from vegetation or the ground. Because the NLEB feeds in and near forested habitats, and because there are no forested areas near the Maher Cattle land application areas, land application activities will not impact the NLEB. As a result, land application activities will have no effect on the NLEB.

Piping plovers' nest on barren sand bars, islands, beaches, peninsulas, and other areas with little vegetative cover. Piping plovers primarily feed on small insects and other invertebrates found in open, wet, sandy areas along lake shores and rivers. Very small numbers of rufa red knots migrate through South Dakota in early spring and fall to and from their breeding and nesting areas in the Arctic. While migrating, rufa red knots seek out beaches, sandbars, mudflats and shallow water, and feed on small insects and other invertebrates. Due to this migration, nesting and feeding behaviors, neither species will be present on agricultural lands subject to land application and land application will not result in discharges that could impact their habitat. As a result, land application will have no impact on either species.

Whooping cranes migrate in early spring and late fall between breeding grounds in northern Canada and wintering grounds in south Texas. During migration, whooping cranes may use a variety of habitats in South Dakota for foraging and roosting. Whooping cranes primarily use shallow, seasonally and semi-permanently flooded palustrine wetlands for roosting, and various cropland and emergent wetlands for feeding. Foods utilized during migration include frogs, fish, plant tubers, crayfish, insects, and agricultural grains. Because whooping cranes use harvested grain fields as a food supply, and Maher Cattle identified several grains as alternative crops in its NMP, whooping cranes could forage in harvested fields used for land application. However, because whooping cranes forage on harvested (i.e., non-vegetated) fields, they would be foraging during periods in which Maher Cattle would be required to mechanically incorporate any applied wastewaters or solids. Whooping cranes avoid areas close to human activity during migration and, as a result, will avoid land application fields during active land application and mechanical incorporation, both of which involve human activity. Because there will be no

interaction between whooping cranes and land application activity, such activity will not impact whooping cranes. Because mechanical incorporation of land-applied materials into soils is required during the times when whooping cranes may forage, whooping cranes will not be directly exposed to land-applied materials. Because chemical handling requirements in the NMP prevent agricultural chemicals from entering wastewater lagoons and manure piles, such chemicals will not be present on land application fields where whooping cranes may forage. As a result, land application will have no effect on whooping cranes.

Northern Long-eared Bat

The proposed action will have no effect on the NLEB because the action area does not include habitat suitable for use by the NLEB and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual NLEB. The NLEB is not expected to occur in the action area. The NLEB typically overwinter in caves or mines and spend the remainder of the year in forested habitats. There are no known caves or mines in the action area nor is it a forested area. The Facility has already been constructed and thus, any tree clearing that might have accompanied construction has already occurred. The permitting action does not authorize new construction. As described above, the species will not be affected by the permitting action. There is no designated critical habitat for the NLEB.

Piping Plover

The proposed action will have no effect on the piping plover because the action area does not include habitat suitable for use by the piping plover and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual. The piping plover is not expected to occur in the action area due to the absence of developed shorelines and sandbars in and downstream of the Facility. Piping plovers are more likely to be found downstream in the Missouri River. As described above, even if present, the species will not be affected by this permitting action. The Facility has already been constructed, and this proposed permitting action does not authorize any new construction. The FWS has finalized critical habitat for this species but the IPaC report states that the action area does not overlap the designated critical habitat.

Rufa Red Knot

The proposed action will have no effect on the rufa red knot. The action area does not include habitat suitable for use by the rufa red knot and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual. The rufa red knot is not expected to occur in the action area because it breeds and nests in the Arctic; overwinters along the Gulf, Atlantic and Pacific Coasts; and utilizes beaches, sandbars, mudflats and shallow water in South Dakota for foraging during migration stopovers. At most, this species would only use the action area as stopover habitat during migrations. As described above, even if present, the species will not be affected by this proposed permitting action. The Facility has already been constructed, and the permitting action does not authorize any new construction. The FWS has proposed critical habitat for this species but the IPaC report states that this location does not overlap the proposed critical habitat.

Whooping Crane

The proposed action will have no effect on the whooping crane. The action area includes some habitat suitable for use by the whooping crane, but for the reasons described above, approval of the Permit would have no effect on an individual. The whooping crane typically utilizes shallow, seasonally and semi-permanently flooded palustrine wetlands for roosting, and various cropland and emergent wetlands for feeding. Cropland is present in the action area and this species could use this area as stopover habitat during migrations. As described above, even if present, the species will not be affected by this proposed permitting action. The Facility has already been constructed, and this permitting action does not authorize any new construction. The FWS has finalized critical habitat for this species but the IPaC report states that this location does not overlap the designated critical habitat.

Monarch Butterfly

The proposed action is not likely to jeopardize the continued existence of the monarch butterfly or result in the destruction or adverse modification of proposed critical habitat. The action area does not include habitat suitable for use by the monarch butterfly and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual. The monarch butterfly is not expected to occur in the action area because it typically utilizes milkweed plants for the caterpillars and nectar-rich flowering plants for the adult butterflies which is not present in the action area. As described above, even if present, the species will not be affected by this proposed permitting action. The Facility has already been constructed, and this permitting action does not authorize any new construction. The FWS has proposed critical habitat for this species but the IPaC report states that this location does not overlap the proposed critical habitat.

Suckley's Cuckoo Bumble Bee

The proposed action is not likely to jeopardize the continued existence of the Suckley's cuckoo bumble bee or result in the destruction or adverse modification of proposed critical habitat. On December 17, 2024, the Suckley's cuckoo bumble Bee (*Bombus suckleyi*) was proposed for listing as an endangered species (89 FR 102074). Suckley's is an obligate social parasite of social bumble bees in the genus *Bombus*. This species cannot successfully reproduce without the availability of suitable host colonies. It is a semi-specialist parasite and confirmed to usurp nests of western bumble bee (*Bombus occidentalis*) and Nevada bumble bee (*Bombus nevadensis*).

Based on the best available information, no Suckley's cuckoo bumble bee have been observed in South Dakota since 1969 despite recent all taxa bumble bee surveys across the entire state (Martens et al 2022¹). Based on this information, FWS considers the Suckley's cuckoo bumble bee to be extirpated from South Dakota. The action area does not include habitat suitable for use by the Suckley's cuckoo bumble bee and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual species. The FWS has not proposed critical habitat for this species.

¹ Martens AP, Johnson PJ, Beckendorf EA, Hesler LS, Daniels JD, Roeder KA (2022) A checklist of South Dakota bumble bees (Hymenoptera, Apidae). Journal of Hymenoptera Research 94: 271–286. <https://doi.org/10.3897/jhr.94.94584>

Western Regal Fritillary

The proposed action is not likely to jeopardize the continued existence of the western regal fritillary or result in the destruction or adverse modification of proposed critical habitat. The action area does not include habitat suitable for use by the western regal fritillary and even if it did, for the reasons described above, approval of the Permit would have no effect on an individual. The western regal fritillary is not expected to occur in the action area because it typically utilizes tallgrass prairies, native pastures, and other open grassland areas with a high density of violets (the sole larval food source) and abundant native nectar-producing flowers for the adults, such as milkweeds, coneflowers, and thistles. As described above, even if present, the species will not be affected by this proposed permitting action. The Facility has already been constructed, and this permitting action does not authorize any new construction. The FWS has not proposed critical habitat for this species.

Conclusion

In conclusion, based on the IPaC information, the analysis included herein, and informal discussions with the U.S. FWS South Dakota field office, EPA has determined that this proposed permitting action will have “no effect” on any listed species or their designated critical habitat. Thus, EPA has no ESA Section 7(a)(2) consultation obligation for this action. With respect to the species proposed for listing by the FWS, EPA concludes that its proposed permitting action is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of any proposed critical habitat. Thus, EPA has no ESA conference obligation for this action.

12 National Historic Preservation Act (NHPA) Requirements

Under 16 U.S.C. 470 et seq. Section 106 of the NHPA and its implementing regulations (36 C.F.R. Part 800) require the Regional Administrator, before issuing a license (permit), to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with state historic preservation officer(s) and tribal historic preservation officer(s) and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation. In addition, the Act requires local government officials, permit applicants, and certain individuals with a demonstrated interest to be involved in consultation.

The area of potential effect (APE) for consideration includes the footprint of the Maher production area and its discharge points into High Bank Creek. As discussed in Section **Error! Reference source not found.** of the Final Environmental Assessment, the proposed action of issuing an NPDES permit would authorize discharges from Maher only during extremely rare high-precipitation events, during which any pollutants discharged would be immediately diluted by high flows in High Bank Creek due to runoff from surrounding areas in the watershed. Therefore, any harm sustained by historic properties outside the APE would be due to the volume of water already in the creek rather than from pollution discharged by the Maher

Facility. Although the area under control of the Maher Facility includes fields designated for land application of animal waste, those fields are not included within the APE because, as agricultural crop fields, they have already been tilled and disturbed with respect to any pre-existing historic properties.

On April 22, 2024, the EPA offered consultation to the Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe. These Tribal consultation offers included an offer of consultation in accordance with Section 106 of the NHPA. A consultation meeting was held with the Standing Rock Sioux Tribe on August 13, 2024. The Standing Rock Sioux Tribe generally raised concerns with practices being compromised by non-Tribal citizen activities within the reservation. No specific historic properties within the APE were identified, such as archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places and landscapes, plant and animal communities, or buildings and structures with significant tribal association. The Cheyenne River Sioux Tribe did not request consultation.

The EPA reached out to the Standing Rock Sioux Tribe's Tribal Historic Preservation Officer (THPO) on June 13, 2024; June 17, 2024; June 18, 2024; July 2, 2024; July 8, 2024; April 14, 2025; April 16, 2025; April 24, 2025; August 7, 2025; and August 11, 2025 to gather information on potential historic properties such as archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places and landscapes, and buildings and structures with significant Tribal association. No potential historic properties were identified. EPA also reached out to the Standing Rock Sioux Tribe THPO for information on potential historic properties and culturally sensitive plant and animal species. No information has been provided by the Standing Rock Sioux Tribe THPO on culturally sensitive plants and animal species (EPA, 2025c in the Final Environmental Assessment).

On July 31, 2025, EPA met in-person with Dr. Mafany Mongoh, Institutional Review Board Chair and professor at Sitting Bull College. Dr. Mongoh shared information on culturally sensitive species, Tribal knowledge, and referred EPA to the THPO contact for more information about historic properties (EPA, 2025b in the Final Environmental Assessment).

The EPA reached out to Tyrel Iron Eyes, Tribal Archeologist with the Standing Rock Sioux Tribe, on November 4 and 7, 2025, requesting information on any culturally sensitive species, such as plants, animals, burial sites, ancient sites, etc. in the area of the Maher Facility. Mr. Iron Eyes confirmed that he could provide such information, but no information was provided (EPA, 2025c in the Final Environmental Assessment).

EPA communicated with multiple staff within the Standing Rock Sioux Tribe Game & Fish Department on November 7 and 13, 2025, inquiring about hunting and fishing practices in the vicinity of the Facility and whether any sensitive species are known to exist near the Facility. Although the Tribe's issuance of hunting and fishing licenses does not provide granular information about the presence of sensitive or otherwise important game or fish species within the action area, these staff referred the EPA to Dr. Mike Gutzmer, Tribal Biologist and Principal of New Century Environmental. In a November 14, 2025, phone call, Dr. Gutzmer explained that

species of special significance to the Tribe, which can be found in the High Bank Creek watershed, include mammals (buffalo, black-footed ferrets, and black-tailed prairie dog) and birds (bald and golden eagles); see Section 3.3 on the Environmental Assessment for more details. Dr. Gutzmer also reiterated information about threatened and endangered species that EPA had already obtained from the conversations with FWS and the FWS's Information for Planning and Consultation (IPaC) online database (EPA, 2025c in the Final Environmental Assessment).

Other information gathered on culturally sensitive plant and animal species is discussed in Sections **Error! Reference source not found.** and **Error! Reference source not found.** of the Final Environmental Assessment.

EPA reached out to the Cheyenne River Sioux Tribe THPO to seek information on potential historic properties. No information was provided.

EPA searched the National Register of Historic Places for properties listed, or eligible for listing, in the National Register of Historic Places (National Park Service 2017, 2025). This search revealed ten sites in Corson County and five in Dewey County, with the nearest historic property approximately ten miles from the APE in the town of Timber Lake, South Dakota. None of the sites are within the APE or downstream of Maher and would therefore not be impacted by any discharges to High Bank Creek.

EPA searched for and found no past federal agency actions in the area.

Given the distance of the nearest identified historic property, lack of any identified historic properties in the APE, and the anticipated water quality improvements of issuing an NPDES permit (Alternative 2 in the Environmental Assessment), EPA determined that the undertaking will not adversely affect any cultural resources or historic properties.

13 401 Certification Conditions

At the time of the Permit issuance, EPA was the Clean Water Act (CWA) Section 401 certifying authority for the Permit, because the Tribe had not received authorization to implement Section 303(c) of the CWA. The EPA sought public comments on the Section 401 certification prior to issuing the certification and finalizing the Permit.

14 Miscellaneous

The effective date of the Permit and the Permit expiration date will be determined upon issuance of the Permit. If a decision is made through the NEPA process to finalize the Permit, the intention is to issue the Permit for a period not to exceed 5 years.

Permit drafted by: Qian Zhang, P.E., U.S. EPA, 303-312-6267
August 14, 2025

ADDENDUM

AGENCY CONSULTATIONS

The Standing Rock Sioux Tribe's Tribal Historic Preservation Officer (THPO) was notified during the public comment period but did not comment on the EPA's preliminary determination that the Permit reissuance will not impact any historic properties. On February 19, 2026, the EPA transmitted a letter signed on February 18 offering further NHPA consultation to Chairman Sitting Bear and the Standing Rock Sioux Tribe THPO. The Tribe and Standing Rock Sioux Tribe THPO did not respond. Additional efforts to consult on historic properties prior to the public comment period are discussed in Section 12 of the SoB.

EPA is the CWA Section 401 certifying authority for the Permit, because the Tribe has not received authorization to implement Section 303(c) of the CWA.

NEIGHBORING JURISDICTION

EPA conducted a neighboring jurisdiction analysis of water resources located downstream from the Facility and outside the external boundaries of the Standing Rock Indian Reservation, in accordance with 40 CFR § 121.13. The EPA permit signatory made a negative "may affect" determination for the authorized discharges from the Facility in the neighboring jurisdiction of the State of South Dakota. EPA documented the factors considered in this determination in the administrative record for this Permit.

PUBLIC NOTICE AND RESPONSE TO COMMENTS

The Permit, statement of basis, and Environmental Assessment (EA), including the CWA Section 401 certification, were public noticed on EPA's website on August 26, 2025. The initial public notice period closed on October 13, 2025. However, EPA extended the public notice period to be closed on October 17, 2025 in response to an extension request from the Standing Rock Sioux Tribe. The Permit and EA comment(s) received and the EPA's response(s) are provided below. No comments were received on the CWA Section 401 certification.

EPA Response to Comments Received During Public Notice of the Draft Environmental Assessment and Draft NPDES Permit for Maher Cattle Company, LLC, and Response to Input Received During Tribal Consultation

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
1	<p>24 form comments received with additional handwritten comments included on some forms.</p> <p>Form comment states: “The purpose of this letter is to comment on the environmental assessment for a discharge permit for Maher Livestock. The proposed permit would allow Maher to discharge run-off from the feedlot into High Bank Creek during a 25 year-24 hour rain event.</p> <p>“Standing Rock is a Treaty Tribe under the 1851 and 1868 Fort Laramie Treaties. The Tribe has a Treaty right to a clean and safe environment. Any Discharge from Maher Cattle violates the Treaties.</p> <p>“The EPA should not issue a permit at this time. The EPA should prepare a detailed environmental impact statement, to fully evaluate the impacts of discharge from Maher Cattle Feedlot on High Bank Creek, the Grand River and public health in the Running Antelope District.</p> <p>“As a community member, I give my person account or experiences regarding the affects of the discharge by Maher Cattle Feedlot along High Bank Creek/Grand River.”</p>	<p>-See Response 1. Comments arguing that a permit should not be issued</p> <p>-See Response 2. Discharge Criteria</p> <p>-See Response 3. 25-year, 24-hour Rainfall Event Information</p> <p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 10. Tribal Treaty Rights</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
2	Form handwritten comment: "The water is durty. Can't swim without getting sores ... or getting sick."	<p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 13. 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 sores from swimming</p>
3	Form handwritten comment: "Fishing for 1, is not the same as previous years. We went fishing back in June 2025. The 3 fish we caught, had slim, sores, on the tail, by the eyes they had a real slimy gunk on them. So we just threw back in the river. The river also has big foamy suddier things floating on the river."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
4	Form handwritten comment: "The fish have sores and the berries are dried out not as plentiful as pasted years."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>
5	Form handwritten comment: "I was out picking grapes and we ran out of water and when we went to the river there was foam coming down river so we went to the church. Plus there was hardly any thing growing out there."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>
6	Form handwritten comment: "The water kinda dirty it should be clean not safe to drink or washing it should be more clear"	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
7	Form handwritten comment: "No fish in the river and no choke cherries and plums along the Grand River and noticed white foam in the Creek, does not look good."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>
8	Form handwritten comment: "The berries are no longer growing properly. The fish are contaminated. If the people were to swim in the river they would catch a rash/sores. While fishing it -Seems fish are no longer biting."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
9	Form handwritten comment: "I questioned people about the colors on top or on the edges of small creeks and lake or ponds. When I grew up as a child I see [unclear] looking water by a bridge and much dead trees when they once were green and full. Children swim in this water. Perhaps someone will recognize how important that is getting close to our small towns. Perhaps some of the illness people face has to do with the environment we live."	<p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>
10	Form handwritten comment: "Yes I agree that the EPA should issue a environmental impact statement. A thorough evaluation should be done on the impact it has. Also running into the Missouri River. Fish and animals drink from the rivers"	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 13. 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 sores from swimming</p>
11	Form handwritten comment: "I do oppose this feed lot or Maher Livestock Please do not allow the Maher permit I love clean air. Please keep the air clean"	<p>-See Response 1. Comments arguing that a permit should not be issued</p> <p>-See Response 6. EPA's CAFO Regulatory Authority</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
12	Form handwritten comment: "I oppose the feed lot, I like clean air within my area."	<p>-See Response 1. Comments arguing that a permit should not be issued</p> <p>-See Response 6. EPA's CAFO Regulatory Authority</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p>
13	Form handwritten comment: "I personally feel like there should be an in depth environmental impact study before anything is issue to see if there is a threat to our drinking water and or wildlife around the Grand River."	<p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p>
14	Form handwritten comment: "Can't take my kids swimming cause I see foam on top of the water. Very dirting looking. But that's where they swim sometimes in the summer's."	<p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
15	Form handwritten comment: "So this summer me and my family went fishing and we caught this weird looking turtle, It kinda looked deformed. I didn't think too much about it until we caught more. I feel like there's no more fish in our river. What are we gunna do if we can't even catch one fish. This makes me very concerned!!"	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>
16	Form handwritten comment: "All summer long, there were no fish. In the spring, there were plenty."	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>EPA Response 11. Culturally Significant Plant and Animal Species</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
17	Form handwritten comment: "Please stop the Maher Cattle Feedlot from discharging into the Grand River. As a community member of Running Antelope we have children that go swimming and also fish at the Grand River Bridge."	<ul style="list-style-type: none"> -See Response 2. Discharge Criteria -See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water -See Response 5. NPDES Permit Monitoring Requirements -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
18	Form handwritten comment: "As a enrolled member of the Standing Rock Sioux Tribe I am concerned of the overflow and run off into our water of process wastewater. Even though they might say it is contained there are still history of pollutants contaminating our creeks, like sores on our children or adults that swim in the Grand River, dead fish, water fowl etc. No permit should be granted by the Tribe to the Maher Cattle company to secure the tribes health."	<ul style="list-style-type: none"> -See Response 1. Comments arguing that a permit should not be issued -See Response 2. Discharge Criteria -See Response 3. 25-year, 24-hour Rainfall Event Information -See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water -See Response 5. NPDES Permit Monitoring Requirements -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming
19	Form handwritten comment: "Permit should NOT be issued Because of the damages to the environment. Poisons our river and affects our harvesting of seasonal berries and make the water unsafe."	<ul style="list-style-type: none"> -See Response 1. Comments arguing that a permit should not be issued -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming
20	Form handwritten comment: "As a community member agrees with what was just read, And hopes everything turns out to be good for your guys"	<ul style="list-style-type: none"> -See Response 7. National Environmental Policy Act Applicability and Review

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
21	<p>Form handwritten comment: “[name, birthdate and birth location]. As a young boy/man my cousins/Tahansis and I helped our dads, uncles and grandpa’s haul water from the Grand River to their homes. All of our community members drank the water, used if for cooking or whatever it was needed for. Everyone swam in the river and we fished a lot so we ate the fish from the Grand River. Because Back then it was safe to do all those things. Today it is not safe to do those things, the Grand River is contaminated from the years of Livestock operators allowing their run-offs to run into our creeks, streams and rivers!!!! We pray the EPA will not issue any permit(s) to allow the run off from MAHER LIVESTOCK or any other Livestock operators into our Creeks like (HIGHBANK CREEK)!!!!”</p>	<ul style="list-style-type: none"> -See Response 1. Comments arguing that a permit should not be issued -See Response 2. Discharge Criteria -See Response 3. 25-year, 24-hour Rainfall Event Information -See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water -See Response 5. NPDES Permit Monitoring Requirements -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
22	<p>Form handwritten comment: “As Running Antelope Local District chairperson of our community I am very concerned about the dumping into High Bank Creek as the toxic pollutant have made it into the Grand River which runs just south of our community. Our families utilize the Grand River to catch fish, pick berries and swim in. The fish are not edible they have sores on them. There are hardly any berries this year. They are no longer plentiful. Some have developed blotches and sores after swimming in the River. Please do not give Maher Cattle Feedlot a permit to dump into High Bank Creek. We deserve clean water!!”</p>	<p>-See Response 1. Comments arguing that a permit should not be issued</p> <p>-See Response 2. Discharge Criteria</p> <p>-See Response 3. 25-year, 24-hour Rainfall Event Information</p> <p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 5. NPDES Permit Monitoring Requirements</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
23	<p>Form handwritten comment: “Concerning giving Maher Cattle Company Feedlot a permit to dump into High Bank Creek. It is located in the middle of the water way. High nitrate levels are killing the vegetation all along the creek. Over by [personal name]’s place spring of 2022 there were large amounts of foam along the culverts. The foam was 4 ft deep. It was so high nitrate because of the cattle piss. I can’t believe EPA would even allow a feed lot that close to the creek. Now they want a permit to dump into the creek. You are going to allow them to dump into our drinking water.”</p>	<p>-See Response 1. Comments arguing that a permit should not be issued -See Response 2. Discharge Criteria -See Response 3. 25-year, 24-hour Rainfall Event Information -See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water -See Response 5. NPDES Permit Monitoring Requirements -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming</p>
24	<p>“I [personal name] want to inform you that Maher Cattle Feedlot, are pouring their waste into the Grand River, an that’s effecting the water, an their are kids who swim in the grand river from our cummunity, an there are animals that drink from that water, killing the fish or giving the fish sores on them all because Maher Cattle feedlot are pouring waste into high land creek that pours into the grand river an its hurting wild fruit like choke cherries, plums, sage.”</p>	<p>-See Response 3. 25-year, 24-hour Rainfall Event Information -See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water -See Response 7. National Environmental Policy Act Applicability and Review -See Response 13. 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 sores from swimming</p>

COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
25	<p>“[In my capacity as the Chairman of the Standing Rock Sioux Economics Committee which possesses legislative jurisdiction over the land and cultural resources of the Tribe], I write to express my strong concerns with the draft Environmental Assessment for a National Pollutant Discharge Permit for Maher Cattle Co.”</p>	<p>-See Response 7. National Environmental Policy Act Applicability and Review -See Response 8. National Historic Preservation Act</p>
26	<p>“The information prepared by EPA for the 2024 Administrative Compliance Order shows that careless practices at the Maher feedlot have already jeopardized public health and the environment on our Reservation. That being the case, EPA should work in close consultation and coordination with the Standing Rock Tribal Council, Departments of Water Resources and Environmental Regulation and Water Resources Control Board. The draft EA does not show that this has been done to the extent it should. Accordingly, I call upon EPA Region 8 officials to visit the Running Antelope district on the Reservation for additional discussions with the Comics Committee, Water Board and Running Antelope community members.”</p>	<p>-See Response 7. National Environmental Policy Act Applicability and Review -See Response 9. Tribal Consultation</p>
27	<p>“I remind EPA that Standing Rock is a Treaty Tribe under the 1851 and 1868 Fort Laramie Treaties, and EPA should proceed in this matter with full respect for our Treaty rights and Tribal sovereignty.”</p>	<p>-See Response 9. Tribal Consultation -See Response 10. Tribal Treaty Rights</p>

<p>28</p>	<p>“The EPA Failed to Consider Tribal Input”</p> <p>“Under the <i>EPA Policy on Consultation with Indian Tribes</i>, ‘EPA ensures the close involvement of Tribal governments and gives special consideration to Tribal input whenever EPA’s actions or decisions may affect the Tribes.’ Significantly, the EPA failed to consider Tribal input into the draft environmental assessment on Maher Cattle Co. (‘Draft EA’). EPA held a single meeting 89 Reservation on July 30-31, 2025, and then-Chairwoman Janet Alkire wrote a letter to EPA Region 8 dated June 2, 2025, identifying Tribal concerns and issues for inclusion in the environmental assessment. These issues included:</p> <ul style="list-style-type: none"> • The need for EPA to comply with the regulations in effect at the time EPA published the scoping notice for this Draft EA on May 23, 2024. • The need for a thorough environmental justice analysis. • Consideration of cumulative impacts of an NPDES permit for Maher with other federal actions affecting the Grand River, such as the effects of Shadehill Dam; and other permitted feedlots, such as Wulf Cattle Co. • The identification and avoidance or mitigation of impacts to natural fruits and medicinal plants along High Bank Creek and the lower Grand River. • The health impacts of fumes from Maher Cattle Co., as well as Wulf Cattle Co. • Consideration of Treaty rights and sovereignty over the permittee, through permit terms requiring compliance with Tribal law. • Implementation of the process for identification, evaluation and 	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 8. National Historic Preservation Act</p> <p>-See Response 9. Tribal Consultation</p> <p>-See Response 10. Tribal Treaty Rights</p>
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COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
	<p>determination of effects to historic properties and traditional cultural properties as established by the Advisory Council on Historic Preservation under section 106 of the National Historic Preservation Act.</p> <ul style="list-style-type: none"> • By letter dated September 10, 2025, the Tribe requested an additional 45 days for comment on the draft EA. <p>“EPA considered virtually none of these issues in the draft EA. The concerns expressed by the Standing Rock Sioux Tribe in meetings and correspondence prior to publication of the draft EA have been largely ignored by EPA. That violates EPA’s Tribal Consultation Policy. It limits the ability of the Tribe and Tribal members to participate in this process. Moreover, as the Tribe possesses the best available information on the resources impacted by the proposed action, EPA’s failure to adequately consider the environmental and cultural resources issues raised by the Tribe undermines its compliance with NEPA, which requires ‘reliable data sources.’ EPA has largely ignore the best data source – the Tribe.”</p>	

<p>29</p>	<p>“The Draft EA is Seriously Deficient and EPA Should Prepare an Environmental Impact Statement”</p> <p>“The draft EA fails to demonstrate compliance with [NEPA]; the Fort Laramie Treaties of 1868 and 1851; [NHPA]; the regulations and guidance of [CEQ] that were in effect at the time EPA engaged in this NEPA process; as well as EPA Tribal Consultation Policy. Many important issues, such as the impacts of a permitted discharge from the feedlot on Tribal hunting and fishing rights, are completely ignored. Other environmental impacts, such as effect of a discharge from Maher Cattle on wild fruits and medicinal plants, or on traditional cultural properties, are given cursory treatment. Treaty and Indian trust resources are vulnerable to degradation from the preferred alternative – but the words ‘Treaty’ and ‘trust resources’ are not to be found anywhere in the draft document.</p> <p>“The EPA is failing to take the requisite ‘hard look’ at all environmental effects to resources of important to the Standing Rock Sioux Tribe. In the draft EPA, 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 draft EA is seriously deficient, and does not serve as the basis for approval of an NPDES permit for Maher Cattle. EPA should not issue a finding of no significant impact. Instead, EPA must prepare an environmental impact statement in order to fulfill its statutory duty of fully evaluating the impacts of an NPDES permit on High Bank Creek and the Grand River, their riparian habitat, and the public health</p>	<p>-See Response 1. Comments arguing that a permit should not be issued</p> <p>-See Response 2. Discharge Criteria</p> <p>-See Response 3. 25-year, 24-hour Rainfall Event Information</p> <p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 5. Monitoring Requirements</p> <p>-See Response 6. EPA’s CAFO Regulatory Authority</p> <p>-See Response 2. Discharge Criteria</p> <p>-See Response 3. 25-year, 24-hour Rainfall Event Information</p> <p>-See Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water</p> <p>-See Response 5. NPDES Permit Monitoring Requirements</p> <p>-See Response 6. EPA’s CAFO Regulatory Authority</p> <p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 9. Tribal Consultation</p> <p>-See Response 10. Tribal Treaty Rights.</p> <p>-See Response 12. The Federal Trust Responsibility to Federally Recognized Indian Tribes</p> <p>-See Response 13. Common causes of turbidity, foam on surface waters, fish sores, other impacts to aquatic species, impacts to vegetation (e.g., berry abundance, choke</p>
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	<p>and welfare of the downstream Tribal communities.</p> <p>“Under NEPA, agencies such as EPA must prepare an [EIS] for ‘major Federal actions significantly affecting the quality of the human environment.’ ‘An agency shall issue an [EIS] with respect to a proposed agency action... that has reasonably significant effect on the quality of the human environment.’ ‘If any ‘significant environmental impacts might result from the proposed agency action then an EIS must be prepared.’</p> <p>“In Table 8 of the draft EA, EPA demonstrated that the Maher feedlot has <i>already</i> discharged significant levels of dangerous contaminants High Bank Greek. The magnitude of existing impacts strongly indicate ‘a reasonably foreseeable significant effect.’ EPA’s conclusion on page 25 that ‘by regulating discharges, the Proposed Action would likely result in water quality improvements to High Bank Creek as concentrations of nutrients, pathogens, (<i>e. Coli</i>) TSS and ammonia decline’ is unsupported by data. It sounds more like wishful thinking than environmental analysis.</p> <p>“EPA attempts to justify fast-tracking the permit by:</p> <ul style="list-style-type: none"> • ‘reducing the discharge of wastewater to only a 24-hour 25-year event...’ • ‘requiring setback and other safeguard...’ (and) • ‘developing and implementing a nutrient management plan.’ <p>“The very words ‘<i>reducing</i> the discharge’ concede the point that there has already been illegal discharge, so taking credit for</p>	<p>cherries, plums, sage) and sores from swimming</p>
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	<p>regulated discharge by a violator seems meaningless. Maher must demonstrate compliance, which it has not done. In addition to violating the Clean Water Act on the Reservation, the Tribe is concerned that Maher Cattle Co. is violating Tribal law, through unauthorized subleases on Indian land.</p> <p>“The setbacks and safeguards in the confinement area are obviously important, but there is not analysis of the extent they will protect water, or their efficacy. EPA relies on a nutrient management plan without disclosing the plan.</p> <p>“The EA is ‘conclusory, internally inconsistent and failed to adequately explain the connection between objective facts and conclusions reached’ and thus is inadequate.</p> <p>“EPA clearly needs to do more work to determine the impacts of permitted discharge from Maher Cattle Co. on Tribal resources. The draft EA lacks sufficient detail to justify a FONSI.</p> <p>“The courts have identified factors to use in determining the adequacy of a FONSI:</p> <ol style="list-style-type: none">(1) Whether the agency has identified relevant environmental concerns;(2) Whether there has been a ‘hard look’ at environmental effects of the proposed action;(3) Whether the agency made a convincing case for the finding of no significant impact; and(4) Whether mitigation may adequately reduce the significance of the impact. <p>“EPA must ‘ensure that no arguably significant consequences have been ignored.’ Yet the EPA failed to identify all</p>	
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COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
	<p>relevant environmental concerns in the draft EA. Significant issues such as the synergistic exposure to the panoply of potential contaminants from the feedlot into High Bank Creek on the vulnerable Tribal population, and identification of historic properties, are completely ignored. Other environmental effects such as impacts to traditional foods and medicinal plants are given inadequate, cursory treatment, with unsupported generalizations of no significant impact. The failure to more thoroughly evaluate all potential impacts to the environment and to public health on the Standing Rock Reservation points to the need for an environmental impact statement prior to the issuance of an NPDES permit for Maher Cattle Co.”</p>	

<p>30</p>	<p>“EPA Fails to Account for Treaty Rights and Tribal Sovereignty”</p> <p>“In the environmental assessment, NEPA requires EPA to ‘utilize a systematic, interdisciplinary approach which will ensure the integrate use of natural and social sciences...in decisionmaking.’ Supposedly, ‘EPA recognizes the importance of respecting Tribal Treaty or similar rights and its obligation to do so.’ Thus, the history of the Standing Rock Sioux Tribe and of the area affect by Maher Cattle Co. must be part and parcel of the analysis. In the draft EA, this is completely ignored.</p> <p>“Standing Rock is a signatory to the Fort Laramie Treaties of 1868 and 1851. Under the 1851 Treaty, Standing Rock acquired title and usufructory rights to hunt, fish and gather throughout a broad area in the northern plains... [excerpt defining territory]</p> <p>“Article 6 of the 1851 Treaty memorializes the Tribe’s Treaty and gathering rights throughout this area: ‘the aforesaid Indian nations...do not surrender the privilege of hunting, fishing, or passing over any of the tracts heretofore described.’ [additional historical context of the Treaty]</p> <p>“Congress ratified the second treaty of Fort Laramie with the <i>Oceti Sakowin Oyate</i> on April 29, 1868. [additional historical context]</p> <p>“The Standing Rock Sioux Tribe, as part of the <i>Oceti Sakowin Oyate</i>, has rejected money damages, and has continuously insisted that land restoration be the cornerstone of a settlement of the outstanding Treaty claims under the 1851 and 1868 Treaties, including land</p>	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p> <p>-See Response 9. Tribal Consultation</p> <p>-See Response 10. Tribal Treaty Rights</p>
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	<p>homesteaded and used for cattle grazing and confinement, such as Maher Cattle Co. [additional historical context]</p> <p>“Today, many of the descendants of the Wounded Knee massacre reside in Rock Creek community on the Grand River and the Running Antelope (Little Eagle) community below the confluence with High Bank Creek. The discharge from Maher Cattle Co. documented in Table 8 of the draft EA in 2022-2023 literally poisoned the descendants of the Wounded Knee massacre.</p> <p>“As stated above, NEPA requires an ‘interdisciplinary approach’ incorporating social science. The history of the Tribe and Running Antelope and Rock Creek communities on the Standing Rock Reservation related to the legal authorities that apply to this NEPA process and to the regulations governing Maher Cattle Co. It provides the context for the public health effects and the human environment impacted by the proposed permit. EPA’s ignoring this history in a NEPA review to permit the discharge of dangerous contaminants in the waters of these communities is an extremely serious oversight. It represents a failure to fulfill EPA’s obligation to fully identify the impacts of the proposed permit on the Standing Rock Sioux Tribe, and most notably the Rock Creek and Running Antelope communities.</p> <p>“There are clear implications for environmental justice, which, again, has been completely ignored in the draft EA. The regulations and guidance in effect at the time this NEPA process was implemented require a thorough environmental justice analysis. Instead, in</p>	
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	<p>section 3.5 of the draft EA, the description of the socioeconomic environment focuses on the non-Indian community of Timber Lake, which is upstream of Maher, rather than the affected Tribal communities downstream on the Standing Rock Reservation. That turns environmental justice upside down.</p> <p>“The applicable regulations also require an analysis of the cumulative impacts of the proposed permit with other federal actions affecting the environment. Tables 4 and 5 in the draft EA document historical contaminant levels in the Grand River that suggest degradation, which may be caused in part by low stream flows below Shadehill Unit, operated by the U.S. Bureau of Reclamation. ‘Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.’</p> <p>“The diminished stream flows of the Grand River caused by the impoundment of water at Shadehill Unit for upstream recreation and irrigation increases water temperature and impedes the dilution of contaminants, including the pollutants discharged by Maher Cattle Co. into High Bank Creek. Residents of Running Antelope community report significant declines in the abundance and quality of vegetation in lower High Bank Creek and the lower Grand River. Fish have been caught with lesions or other deformities, presumably due to existing water quality degradation. There is concern with impacts to children swimming and impacts to skin and from digestion of contaminated water.</p> <p>“The significance of the environmental impacts of the proposed NPDES permit relates directly to low flows of the Grand</p>	
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	<p>River caused by the federal reclamation project at Shadehill. The Tribe asked EPA to evaluate this cumulative effect, along with the cumulative effect of the NPDES permit to Wulf Cattle in nearby Bear Soldier district on air quality. EPA has ignored all of this.</p> <p>“The Tribe’s Treaties with the United State must be part and parcel of this 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.’ As a nation, Standing Rock ‘possess(es) attributes of sovereignty over both their members and their territory.’ The Maher Cattle Co. is within the Standing Rock Reservation and the land is Indian Country within the definition of 18 U.S.C. § 1151. Standing Rock has asserted jurisdiction over its territory in Article I of the Tribal Constitution. [excerpt from Tribal Constitution]</p> <p>“The effect of illegal discharge of dangerous contaminants from Maher Cattle Co. has a significant effect on the Reservation environment, Treaty and trust resources, and public health in the affected Tribal communities. The attached Standing Rock Reservation Game and Fish Map indicates that most land downstream from Maher Cattle Co. in the High Bank Creek sub-basin and along the Grand River below the confluence with High Bank Creek, are Tribal or allotted trust land. The water quality, riparian vegetation – which includes abundant wild fruits, fish and wildlife habitat are trust resources that could be affected. The private wells of Tribal members and air quality they are exposed to are affected as well. High Bank</p>	
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COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
	<p>Creek and the lower Grand River are used by Tribal members for recreation, including children swimming, and for hunting and fishing.</p> <p>“The failure of an EA to properly evaluate the impact to Tribal hunting rights violates NEPA. The draft EA clearly fails to comply with the requisite requirements to evaluate impacts and respect Standing Rock’s Treaty rights.</p> <p>“The <i>EPA Policy on Consultation with Indian Tribes</i> 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 issue 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. Any permit should have a limited term, and ongoing compliance monitoring by Tribal and federal officials. Ultimately, the failure to address these issues in the draft EA and draft NPDES permit demonstrates noncompliance with the EPA Tribal Consultation Policy and disrespect of the Tribe’s sovereignty.”</p>	

<p>31</p>	<p>“The Draft EA fails to consider the serious human health risks from synergistic exposure to toxic CAFO pollution, particularly for people with diabetes, asthma, COPD and other chronic diseases”</p> <p>“CAFO emissions are toxic mixtures. The health risks from CAFO exposure should include an assessment of the health risks posed by synergistic exposure to all the pollutants, and not just one at a time. For example, CAFO pollutants include lung irritants, inflammatory agents, odor compounds, allergens, and antibiotics. The reality is that people will be exposed to many or even most of these, and often at the same time. The cumulative impact to the community of exposure to the entire toxic mixture of CAFO pollution should be considered. The Draft EA fails to conduct any cumulative exposure or cumulative impacts assessment, thus will underestimate health risks, particularly to people with chronic health conditions such as asthma, COPD, and diabetes.</p> <p>“Diabetes increases risk of frequent E. coli infection. People with diabetes – characterized by high blood glucose levels – are at greater risk of infections due to impaired immune function, compared with the general population. In addition, people with diabetes are at a higher risk of E.coli urinary tract infections, and more likely have serious complications as a result. A recent study by Son and Bell (2025) provides compelling new evidence of health risks posed by CAFOs, by analyzing health outcomes based on both binary exposure (presence vs. absence of CAFO) and exposure intensity. Their findings show that simply living near CAFO operations is associated with disease and death from diabetes mellitus (Type 2 diabetes) and</p>	<p>-See Response 7. National Environmental Policy Act Applicability and Review</p>
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	<p>cerebrovascular disease. Furthermore, the exposure intensity analysis reveals a dose-response relationship, particularly for cerebrovascular mortality, reinforcing the causal link between these industrial facilities and serious health consequences.</p> <p>“The draft EA fails to mention the alarmingly high prevalence of type 2 diabetes among SRST members and residents. Diabetes is one of the Tribes most serious health crises, demanding significant resources to manage. Diabetes can require a lifetime of daily medical treatments and management. Diabetes is also the leading causes of kidney disease and kidney failure among Native Americans, necessitating costly and difficult dialysis treatments, kidney transplant surgery and medications. American Indian and Alaska Native adults have type 2 diabetes at a rate that is roughly 3 times higher than White adults, according to recent CDC data. Kidney failure from diabetes among Native Americans is the highest of any race in the U.S. The Draft EA fails to evaluate the cumulative impact of the toxic CAFO pollution mixtures on people that are already suffering extraordinarily high rates of diabetes.</p> <p>“Diabetics living in poverty in rural areas have difficulty affording the fresh meats and vegetables necessary to control their blood sugar. Meanwhile, subsistence hunting and fishing are part of the Tribe’s culture, which makes Tribal members more vulnerable to pollutant contaminating the food chain. The public health baseline on the Reservation, in combination with high unemployment and poverty levels, and a diet related to subsistence hunting and fishing practices, results in a heightened</p>	
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	<p>vulnerability of Standing Rock Tribal members to certain pollutants. This is ignored by EPA in its Draft EA.</p> <p>“CAFO dust is a toxic mixture, especially harmful for people with respiratory diseases. From studying CAFO workers, researchers have reported that dust particles generated from CAFO operations includes animal feed, skin cells, hair, and dried feces which can trigger lung inflammation that, if prolonged, can elevate risk of bronchitis and asthma. Exposure to these toxic dusts would be especially harmful for people who suffer from allergies, asthma, or [COPD].</p> <p>“Toxic CAFO dust can travel with animal transport trucks, spreading E.coli and other contaminants. The Draft EA mentions both dust and truck traffic, but not the cumulative risks posed by both together. The Draft EA talks about truck traffic solely in terms of noise (See Section 3.2.3 p. 18 and Section 4.2.3, p. 26). However, truck traffic, which includes transporting animals, will also increase the spread of toxic CAFO dust. There are studies linking animal transport trucks to bacterial health threats, including to antimicrobial-resistant strains of pathogens that cannot be treated with routine medical treatments. People exposed this way – including workers and communities – can be infected with resistant bacterial strains from human-to-human transmission, from direct contact with animals, through the food chain, and from environmental exposure to the CAFO contaminants such as from aerosols and dusts.</p> <p>“Toxic CAFO dust contaminated can drift in the air for many miles from the feedlot or from trucks transporting animals and</p>	
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COMMENT #	COMMENT/INPUT	EPA RESPONSE (see detailed responses below)
	<p>animal waste. In this way, E.coli-contaminated dust can end up on people’s gardens, wild berries, and other food sources that then become contaminated. The EPA Draft EA should include the risks from off-site contamination by toxic CAFO dust, from both the feedlot and from transportation trucks scattering dust, as part of a cumulative assessment of the health harms to the Standing Rock Sioux Tribe.</p> <p>“In conclusion, for the Standing Rock Sioux Tribe, diabetes and other chronic health risks intersect with a long history of environmental injustice and chronic underinvestment in healthcare infrastructure. Diabetes prevalence, asthma, and other chronic health ailments among the Standing Rock Sioux cannot be disentangled from the environmental conditions that are exposed to. CAFOs often operate in or near low-income, rural, and Indigenous communities, compounding existing health burdens. When CAFO-related pollutants contaminate land and water sources traditionally used for subsistence, they disrupt indigenous food systems, erode food sovereignty, and increase dependence on processed foods, further exacerbating diabetes and other metabolic diseases. The scientific evidence, including the recent findings from Son and Bell (2025), makes clear that proximity to CAFOs is not just a matter of environmental concern, but a direct health threat.”</p>	

32	<p>“EPA has Not Complied with Section 106 of the National Historic Preservation Act”</p> <p>“Under Section 106 of the National Historic Preservation Act, prior to any federal agency undertaking, such as the issuance of an NPDES permit for Maher Cattle Co., the agency must identify and evaluate the significance of any historic property listed or eligible for listing on the National Register of Historic Places, and disclose a determination of effects on those properties, in consultation with the appropriate historic preservation office. Under section 101(d)(2) of the act, if the undertaking is on an Indian Reservation, that officer is the Tribal Historic Preservation Office (if delegated by the Secretary). Properties of religious or cultural significance are eligible for listing on the National Resister and are included in the ‘section 106 process.’ Under the regulatory process for section 106, the Historic Preservation Officer may concur with the agency’s determination, or, if not, to offer mitigation or elevate any dispute to the federal Advisory Council on Historic Preservation. The section 106 process is to be conducted in coordination with the Agency’s NEPA process for the particular undertaking.</p> <p>“It appears that none of this was done for the proposed NPDES permit for Maher Cattle Co. The draft EA identifies a single letter, a meeting regarding sacred sites and a discussion with THPO. There is no evidence of a Class 1, II, or III survey in compliance with the requirements of section 106. EPA cites 36 Part 800, but the record is devoid of any evidence whatsoever of compliance with the regulations. Any FONSI or NPDES permit will violate section 106 of the [NHPA].”</p>	<p>-See Response 8. National Historic Preservation Act</p>
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INPUT FROM TRIBAL CONSULTATION

The EPA considered input from the Standing Rock Sioux Tribe on the Draft Environmental Assessment and draft NPDES permit for Maher Cattle, as received through Tribal consultation held through a combination of meetings and written communication from the Tribe during the consultation period of April 22, 2024, through November 5, 2025. More details on the nature of EPA's consultation with the Tribe and how EPA considered the Tribe's input in the final EA and NPDES permit can be found in EPA Response 9.

EPA Responses 1-13 to Comments Received During Public Notice of the Clean Water Act (CWA) Draft National Pollutant Discharge Elimination System (NPDES) Permit and Draft Environmental Assessment for Maher Cattle Company, LLC (Maher or Facility), and Response to Input Received During Tribal Consultation

The EPA notes that when it issued the public notice for Maher, it public noticed a draft permit, as defined at 40 C.F.R. § 122.2. This response to comments was prepared pursuant to 40 C.F.R. § 124.17 to support the EPA's final permit decision under 40 C.F.R. § 124.15. This document also responds to input received from the Standing Rock Sioux Tribe during Tribal consultation.

EPA Response 1. Comments arguing that a permit should not be issued: Section 402(a) of the CWA authorizes the EPA to issue NPDES permits for discharges, upon condition that the discharges will meet the applicable requirements of the CWA or other such requirements as the EPA determines are necessary to carry out the provisions of the Act. Region 8 has written the Maher permit to include conditions necessary to comply with all applicable requirements of the CWA and its implementing regulations, including the generally applicable permit requirements in 40 C.F.R. part 122, the CAFO-specific permit requirements in 40 C.F.R. §§ 122.23 and 122.42(e), and the applicable effluent limitation guideline at 40 C.F.R. part 412, subpart C.

Moreover, if the EPA does not issue this permit to Maher, then in the absence of a permit, Maher would not be required to meet any effluent limitations and standards (including land application setback requirements); special conditions (such as requirements for developing and implementing a nutrient management plan [NMP], facility closure requirements, requirements for the transfer of manure, litter, and process wastewater to other parties, and others); discharge monitoring and notification requirements (such as notification of discharges resulting from manure, litter, and process wastewater storage, handling, on-site transport and application and monitoring requirements for all discharges from retention structures); annual reporting requirements; and standard permit conditions such as requirements to maintain records and properly operate and maintain controls. There would be no monitoring or reporting mechanisms to keep track of any discharges that could happen at the Facility.

An NPDES permit provides enforceable conditions for all the above types of requirements, which would mitigate the impact of an allowable discharge, should one occur at the Facility. The EPA notes that an NPDES permit is not a permit to operate the Maher Facility, but rather a permit that prohibits discharges in all circumstances except certain rare, extreme precipitation events (see Response 3 below).

No change is being made to the permit or EA in response to these comments.

EPA Response 2. Discharge Criteria: The EPA received several comments addressing the quality of the water in High Bank Creek and the Grand River and urging EPA to protect the water in those water bodies from discharges from Maher. In addition to the various permit conditions for the Maher Facility broadly described in Response 1, the primary permit condition for the outfall from the feedlot is a technology based effluent limit based on the new source performance standard (NSPS) for cattle CAFOs at 40 C.F.R. § 412.35. The NSPS generally prohibits discharges of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, but does authorize overflows containing pollutants provided the production area is “designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event” and complies with the additional measures in 40 C.F.R. § 412.37(a) & (b). As outlined in the NPDES permit, Part II.A.1, the permit requires Maher to comply with the following conditions:

“1. Technology-based Effluent Limitations and Standards - Production Area

There shall be **no discharge** of manure, litter, or process wastewater pollutants into waters of the United States from the production area all requirements provided below are met:

- a. Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:
 - i. The production area is designed, constructed, operated and maintained to contain all manure, litter, process wastewater plus the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location (3.74 inches).
 - ii. The production area storage volume is adequately designed, constructed, operated and maintained contain all manure, litter, and process wastewater accumulated during the storage period including, at a minimum, the following:
 - (A) The volume of manure, litter, process wastewater, and other wastes accumulated during the storage period;
 - (B) Normal precipitation less evaporation during the storage period;
 - (C) Normal runoff during the storage period;
 - (D) The direct precipitation from the 25-year, 24-hour rainfall event;
 - (E) The runoff from the 25-year, 24-hour rainfall event from the production area;
 - (F) Residuals solids after liquid have been removed;
 - (G) Necessary freeboard to maintain structural integrity; and
 - (H) A minimum treatment volume, in the case of treatment lagoons.”

This condition ensures that the Maher Facility is, for the most part, a non-discharging facility. 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 (see Response 3 for additional discussion of historical rainfall events and dilution).

No changes were made to the permit or EA in response to relevant comments.

EPA Response 3. 25-year, 24-hour Rainfall Event Information: The Facility has constructed 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 in precipitation. The only discharges that would be permitted from the CAFO production area are runoff and direct precipitation from storm events that exceed a 25-year, 24-hour rainfall event (i.e., rainfall events with precipitation exceeding 3.74 inches). Such discharges, therefore, would be in the context of a high-volume storm event in the High Bank Creek drainage, meaning that there would be significant volumes of natural runoff simultaneously entering the receiving water from the entire watershed, which would dilute pollutants discharged from the CAFO production area. As a result, pollutant discharges from the Maher Facility in such circumstances would have minimal effect on the water quality in High Bank Creek.

To illustrate the impact of dilution on pollutants discharged from the Facility, Figure 1 below shows the available daily precipitation data (from 1911 to 2025) obtained from the National Oceanic and Atmospheric Administration (NOAA) ATLAS 14 point, Precipitation Frequency Data Server for the closest location to the Facility, the town of Timber Lake (about 7 miles southeast from the Facility)². Only two storm events in the 114 years of data collection were recorded with precipitation greater than or equal to the 3.74 inches of a 25-year, 24-hour rainfall event: 3.75 inches of rain fell on June 30, 1988, and 3.74 inches of rain fell on June 18, 2014.

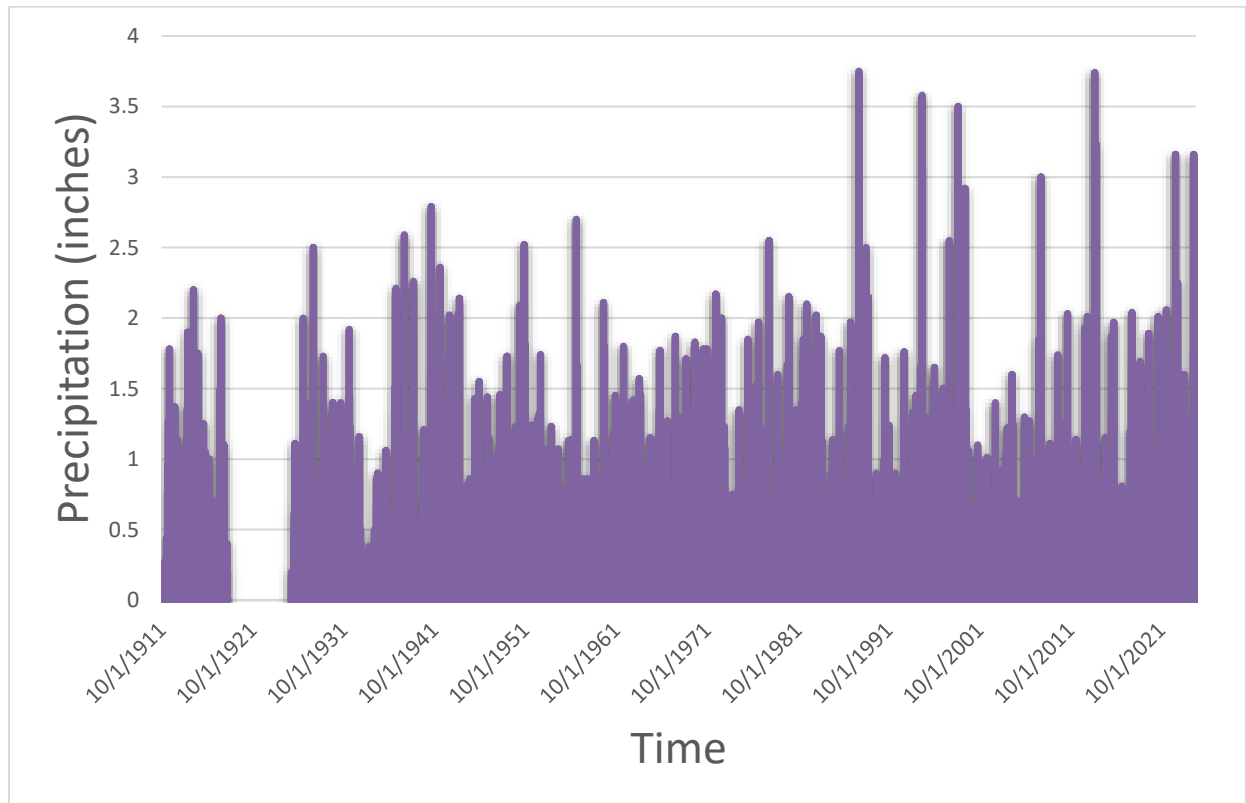
If there is a 25-year, 24-hour rainfall event like the one that generated 3.75 inches of rain in June 1988, the volume of runoff from 3.74 inches of rainfall will be contained within the Facility's wastewater storage lagoons before anything is discharged to High Bank Creek. Therefore, there will be only 0.01 inch (3.75 minus 3.74) of wastewater overflowing from the holding lagoons and discharged to High Bank Creek. The EPA evaluated the dilution factor using a conservative estimate of runoff from the watershed. If the High Bank Creek watershed were only as large as the footprint of Maher's production area, there would be tens of thousands times dilution of the 0.01 inches discharged in High Bank Creek in the proximity of Maher ($3.75 \div 0.01 \times 100\% = 37,500\%$). In reality, the watershed for High Bank Creek has a much larger area running off into

² National Oceanic and Atmospheric Administration. (n.d.). *NOAA Atlas 14 Point Precipitation Frequency Estimates: Precipitation Frequency Data Server (PFDS)*. Accessed October 23, 2025. <https://hdsc.nws.noaa.gov/hdsc/pfds/>

High Bank Creek than the size of the Maher production area footprint; hence, the dilution of wastewater going into High Bank Creek would be even greater.

No changes were made to the permit in response to relevant comments. The EPA revised Section 4.2.1 of the EA to better described the role of dilution when any pollutants would be discharged in scenarios covered by the proposed action.

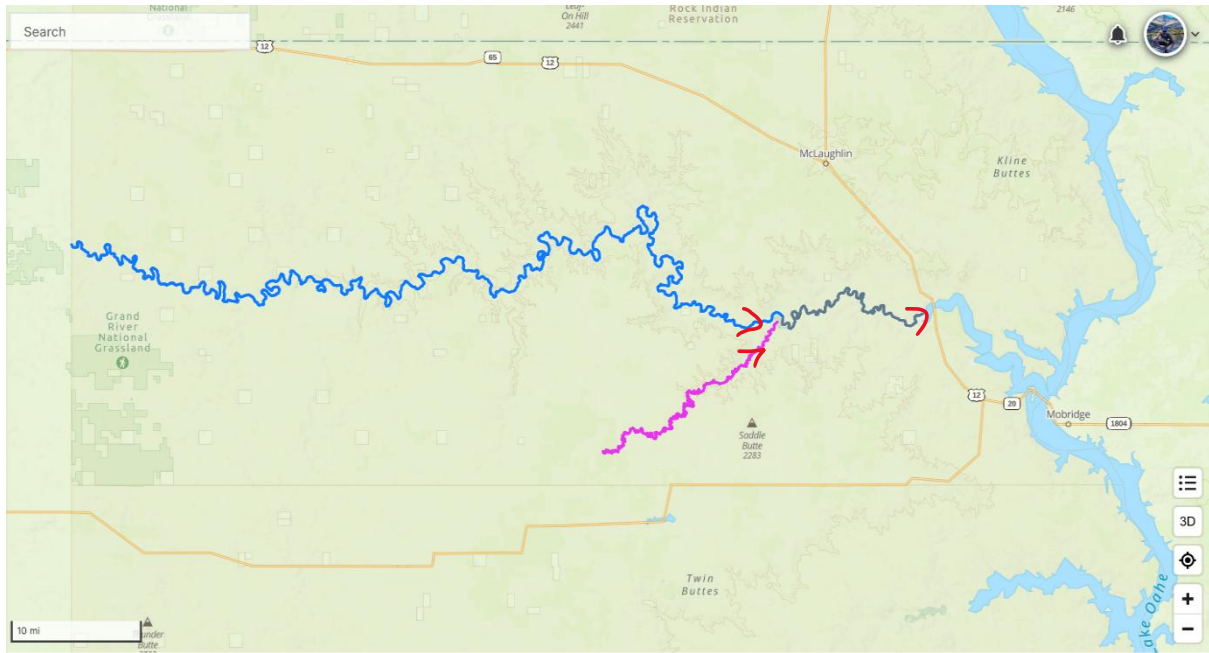
Figure 1. Daily precipitation for Timber Lake, SD (USC00398307)



EPA Response 4. High Bank Creek Distance to Grand River and Potential Effects on Surface

Water and Drinking Water: The Maher Facility is located about 17 miles as the crow flies from the confluence of High Bank Creek and the Grand River (about 34 stream miles). The confluence of High Bank Creek and the Grand River is about 12 miles as the crow flies from the Missouri River (about 21 stream miles). The Running Antelope District, Little Eagle, South Dakota is about 20 miles northeast as the crow flies from the Maher facility (about 44 stream miles). The Rock Creek District, Bullhead, South Dakota is about 18 miles north-northeast from the Maher facility as the crow flies (about 27 stream miles) upstream along the Grand River from its confluence with High Bank Creek).

Figure 1. Map depicting High Bank Creek below the Facility (purple), the Grand River from the Standing Rock Sioux boundary to its confluence with High Bank Creek (blue), and the Grand River from its confluence with High Bank Creek to the Missouri River/Lake Oahe (light black).



As explained in Response 3 above, any discharge from the Facility that meets the 25-year, 24-hour rainfall event threshold is not likely to affect the water quality in High Bank Creek. At the location of Running Antelope District about 44 stream miles further downstream, pollutants would be naturally attenuated in the dynamic water column after traveling such a long distance and further diluted by the Grand River. The Rock Creek District location is located along the Grand River, about 18 miles north-northeast (NNE) from Maher as the crow flies and about 27 stream miles *upstream* of the confluence of the Grand River and High Bank Creek. As a result, pollutants discharged from the Maher Facility cannot reach the Rock Creek District and would not pose a water quality concern to these communities.

The EPA also received comments from people living in the Running Antelope District about impacts to drinking water sources. The commenters did not provide any specific wells or locations of drinking water intakes that may be affected by the EPA's issuance of the NPDES permit, and a comment from the Tribe about potential drinking water impacts in general did not mention a particular location. In the event that pollutants are discharged during a 25-year, 24-hour rainfall event, they would pose an insignificant water quality concern, because as discussed above, water travels a long distance from Maher to the Running Antelope District, undergoing instream dilution and attenuation. The Rock Creek District is upstream from Maher, along the Grand River, and it would not see a water quality effect from the Facility.

To evaluate the presence of any domestic water wells downstream of the Facility and with proximity to High Bank Creek, the EPA reviewed the State of South Dakota's Well Completion Report GIS site (<https://apps.sd.gov/nr68welllogs/>). The EPA reviewed the full length of High Bank Creek and the Grand River from the Maher Facility to the Missouri River. The GIS site identified six wells downstream of Maher within ½ mile of High Bank Creek classified as domestic wells. There were no wells classified as domestic within ½ mile of the Grand River downstream from its confluence with High Bank Creek, including in the town of Little Eagle. Mapping indicates that five of the wells along High Bank Creek are situated at an elevation at least 30 feet above the level of the creek. At those elevations, there is no way for water from High Bank Creek conveying pollutants from the Facility to reach the well heads and inundate these water wells, so there is likely to be no direct impact from Maher on these wells. There is one well located in the flood plain at the confluence of the Grand River and High Bank Creek. This well is approximately 870 feet from the Grand River and ¼ mile from High Bank Creek and the well head is situated about 6 feet above the elevation of the creek. It is possible this well could be inundated during a highwater event on either the River or the Creek. As a result, there is the potential for surface water intrusion into this well during high-water events, and thus the possibility that pollutants attributable to the Maher Facility could directly impact this well. However, the risk of surface water intrusion into this well is pre-existing and as described in Response 2, any pollutants from the Facility would be extremely diluted in the event of a high-water event of this magnitude and would thus have minimal additional effect beyond the pre-existing risk of contamination of the well via intrusion.

Additionally, the EPA looked for information on the groundwater hydrology of High Bank Creek to determine if there is any risk of discharges from the Maher Facility infiltrating into groundwater and then into the six wells noted above; however, the EPA was unable to identify any hydrologic data for the creek. Nonetheless, the EPA has concluded that infiltration impacts are unlikely because any discharge from the Facility would occur only during rare, large precipitation events and any pollutants would be highly diluted, as explained in Response 2, and would be moving relatively quickly with a large volume of runoff and thus have minimal opportunity for infiltration.

No changes were made to the permit in response to relevant comments. However, EPA updated the Statement of Basis for the permit to accurately reflect stream miles in the receiving and downstream waters. The EPA revised the EA to better explain why surface water and drinking water resources would be minimally affected by the proposed alternative.

EPA Response 5. NPDES Permit Monitoring Requirements: In Part IV.E. (High Bank Creek Monitoring Requirements), the NPDES permit requires quarterly monitoring at three instream locations - UP3, DP, and DS1, as outlined in Table IV-B (copied below). The monitoring

requirements for these locations are outlined in Table IV-C (copied below). Monitoring results for High Bank Creek locations at UP3, DP, and DS1 are required to be submitted with the annual report.

Table IV-B. Monitoring Locations for High Bank Creek (UP3, DP, and DS1)

Site ID	Name	Latitude	Longitude	Description
UP3	Upstream 3	45.50399	- 101.17428	High Bank Creek upstream of the production area
DP	Discharge Point	45.50846	- 101.16197	Discharge point near the yearling pens into High Bank Creek where discharge was observed in 2023
DS1	Downstream 1	45.50782	- 101.15308	High Bank Creek downstream of the production area

Table IV-C. Monitoring Requirements for High Bank Creek Locations (UP3, DP, and DS1)

Sampling Parameters	Monitoring Frequency	Sample Type	Data Value Reported on Annual Report
Ammonia as N (mg/L)	Quarterly	Grab	All Quarterly Results
Nitrate as N (mg/L)	Quarterly	Grab	All Quarterly Results
Nitrite as N (mg/L)	Quarterly	Grab	All Quarterly Results
TKN (mg/L)	Quarterly	Grab	All Quarterly Results
TN (mg/L) <u>c</u> /	Quarterly	Calculate	Calculated Quarterly Results
Total Phosphorus (mg/L)	Quarterly	Grab	All Quarterly Results
BOD ₅ (mg/L)	Quarterly	Grab	All Quarterly Results
TSS (mg/L)	Quarterly	Grab	All Quarterly Results
<i>E. Coli</i> (MPN/100 mL)	Quarterly	Grab	All Quarterly Results

The EPA is requiring quarterly monitoring both upstream and downstream of the production area of the Facility to ensure that the monitoring data captures seasonal variation of samples and is representative of the water quality impacts of the production area activities. The

monitoring data will be evaluated to determine future permit actions and whether any changes in permit limitations or continued monitoring are needed for the Facility.

No changes were made to the permit or EA in response to relevant comments.

EPA Response 6. EPA’s CAFO Regulatory Authority: As explained in greater detail in Responses 1 and 2, the Maher CAFO NPDES permit establishes a variety of permit conditions, as well as discharge limitations for any surface discharge of wastewater from the Facility, to ensure compliance with the CWA. Emissions of dust, odor, and air pollution are not subject to CWA regulation and outside the scope of the CAFO NPDES permit. As explained in the EA, the proposed action would result in no change in air quality compared to the no action alternative.

No changes were made to the permit or EA in response to relevant comments.

EPA Response 7. National Environmental Policy Act Applicability and Review:

The EPA received a CWA Section 402 NPDES permit application from Maher on September 28, 2023. EA at 2. In a February 26, 2024, letter, the EPA notified Maher and the Standing Rock Sioux Tribe, among others, that the EPA had determined the Maher Facility is a “new source” under the CWA NPDES regulations (see 40 C.F.R. §§ 122.2 and 122.21(l)(2)(ii)).³ The issuance of an NPDES permit to a “new source” is subject to environmental review pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* CWA section 511(c), 33 U.S.C. § 1371.⁴

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).⁵ An EA must provide

³ February 26, 2024, Letter from Kathleen Becker, EPA Region 8 Regional Administrator, to Patrick Maher, Owner/Operator, Maher Cattle Company, LLC re. New Source CAFO Determination, Permit No. SD-0034768. EA at 4.

⁴ As discussed in Response 1, the EPA notes that an NPDES permit is not a permit to operate the Maher Facility, but rather a CWA permit that prohibits discharges of pollutants to waters of the United States in all circumstances except certain extreme precipitation events.

⁵ The EPA received a comment on the Draft EA stating that the EPA needed to comply with the Council on Environmental Quality (CEQ) NEPA regulations in effect at the time the EPA published the scoping notice for this Draft EA in May 2024. However, Executive Order (E.O.) 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025), directed CEQ to “propose rescinding CEQ’s NEPA regulations found at 40 C.F.R. 1500 *et seq.*” CEQ issued an Interim Final Rule rescinding its NEPA implementation regulations on February 25, 2025. *See* 90 Fed. Reg. 10610 (Feb. 25, 2025). The Interim Final Rule became effective on April 11, 2025, and all iterations of CEQ’s NEPA implementing regulations were rescinded. *Id.* CEQ’s removal of its NEPA regulations does not implicate reliance interests. *See* 90 Fed. Reg. at 10613-10614. *See also Marin Audubon Soc’y v. FAA*, 121 F.4th 902 (D.C. Cir. 2024) (stating that CEQ’s NEPA implementing regulations are *ultra vires* because the agency lacks any lawful authority to promulgate binding regulations.) The Draft EA was issued for public comment in August 2025 after the CEQ Interim

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).

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 4-5.⁶ The scoping notice was posted on the EPA's website with Maher's 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 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.

Pursuant to NEPA section 107(g)(1)(B)(iii), the EPA's deadline to issue the EA was one year from the date on which the Agency issued its notice of intent to prepare the EA. In this case, the one-year deadline was May 29, 2025. However, because the EPA did not receive a complete NPDES application until February 17, 2025, and other circumstances, the Agency could not meet the May 29, 2025 deadline for completing the EA. NEPA section 107(g)(2) provides that if an agency cannot meet the one-year deadline to complete the EA, the agency may extend the deadline, in consultation with the permit applicant, to establish a new deadline that provides only so much additional time as is necessary to complete the EA. In April 2025, the EPA consulted with the permit applicant and extended the deadline for the EA until December 1, 2025.⁷

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.

The Final EA evaluated the environmental consequences from the EPA's action to issue the NPDES permit for the following resource areas:

Final Rule became effective. To develop the EA, the EPA utilized its own existing NEPA regulations to the extent the EPA NEPA regulations are consistent with the text of NEPA, E.O. 14154, and caselaw for developing the EA for the Maher NPDES permit action.

⁶ See 40 C.F.R. §§ 6.200(c)(2-4), 6.203(a)(2),(4-5).

⁷ April 2025 Email exchange between Qian Zhang, EPA Region 8 Water Division, and Patrick Maher, Owner/Operator, Maher Cattle Company, LLC re. Consultation with Environmental Assessment (EA) Extension Request to December 1, 2025.

- Physical resources including water resources, air quality, noise environment and weather events.
- Biological resources including mammals, birds, fish and invertebrates.
- Culturally significant plant and animal species.
- Socioeconomic environment including economic environment, human health/public health, and Tribal cultural practices.
- Tribal Treaty Rights

After evaluating the environmental effects from the EPA's action to issue the NPDES permit in the EA, the Agency has issued a preliminary FONSI and is proposing to issue the NPDES permit pending a 30-day comment period on the preliminary 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.

NEPA is a purely procedural statute that that does not mandate particular results or substantive outcomes. *Seven County Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 180 (2025). 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)).⁸ 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).

For the Maher Facility, the EA did not specifically assess cumulative impacts associated with the following facilities and communities, due to 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

⁸ 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).

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). See Response 4 above. The Supreme Court recently 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. See Responses 1-6 re. impacts from the EPA’s issuance of the NPDES permit.

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. See also Response 1-5. The EPA notes that all NPDES permitting documents including the NMP were available for comment throughout the comment period. Specific data as well as technical requirements from the EPA’s CAFO regulations for NPDES permits were incorporated into the NPDES permit and NMP and were included in the documents provided for public comment. See 40 C.F.R. Part 412 and Responses 1-6. As documented in the EA Sections 4 and 5 and Responses 1, 3, 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.

The EPA received comments expressing 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 Response 4. In short, the EPA concluded that such impacts from any Facility discharges into High Bank Creek are unlikely.

In response to input received citing additional publications related to health impacts and concerns about risks from dust and emissions, the EPA conducted additional review of these publications and evaluated the potential health impacts associated with CAFOs. Additional information is documented in the EA. See EA Section 3.5.2. However, it is unlikely that such health impacts would result from the specific EPA action of issuing the NPDES permit to Maher.

See EA Section 4.4.2. For the following studies referenced in Tribal input, the EPA did not include them as references in the EA:

1. A 2025 study by Son and Bell⁹ was included in comments as evidence of health risks posed by CAFOs, including disease and death from diabetes mellitus (Type 2 diabetes) and cerebrovascular disease. The study authors claim that presence of CAFOs was associated with higher risks of cause-specific mortality in ZIP codes within 10 km of a facility. The evidence of a positive association was weak, with individuals living within 10 km only 1.028 (essentially 1) times more likely to die of cerebrovascular disease compared to those in ZIP codes without CAFO exposure for North Carolina. This is essentially no difference between comparison groups. This study has significant limitations and is prone to bias, including the inability to control for causes of disease and death between cases and controls (e.g., illness and mortality due to other causes such as smoking, complications from other chronic diseases, etc.), lack of exposure assessment and the error of assuming that an association found at the group level also applies to individuals within that group. Therefore, the EPA did not include this study in the EA.
2. The studies cited in comments by Cole et al.¹⁰ and Heederik et al.¹¹ discuss the potential range of CAFO emissions and focus primarily on occupational exposures in swine CAFO operations, not community-level impacts from cattle CAFOs. Maher is a cattle CAFO. Additionally, the studies extend observations from occupation exposures (those working at a swine CAFO facility) to the surrounding community without much analysis of exposure potential outside the facility. Therefore, the EPA did not include these studies in the EA.

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

⁹ 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>.

¹⁰ 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>

¹¹ 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/>.

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.

The Tribe raised concerns that animal transport trucks will spread *E.coli*. Section 3.5.2 of the EA discusses the number of *E. coli* infection cases reported in 2023; there were no cases reported from Dewey County, which is just south of Maher, and less than five reported in Corson County where Maher is located (South Dakota Department of Health, 2024). 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. The EPA does not have information on the causes or exposure pathway of the reported *E. coli* case(s). Instead, the EPA evaluated the prevalence of various exposure pathways that could be relevant in the Facility's environment. Stein and Katz¹² 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. Heiman et al.¹³ 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. The EPA 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 EA was updated to reflect this information.

Regarding plants and animals that are the subject of hunting and fishing practices or other cultural significance, see Response 11 – Culturally significant plants and animals. 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 sores from swimming are addressed at Response 13.

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 a comment that the Agency's NEPA compliance needed to include an environmental justice analysis consistent with 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,

¹² Stein RA, Katz DE. *Escherichia coli*, cattle and the propagation of disease. FEMS Microbiology Letters. 2017 Mar 1; 364(6).

¹³ 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.

2025, revoked E.O. 12898. *See* 90 Fed. Reg. 8633 (Jan. 31, 2025). 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. In addition, on May 28, 2025, the CEQ withdrew its “National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change.” *See* 90 Fed. Reg. 22472-22472 (May 28, 2025). Therefore, the EPA did not address this document in the EA for the Maher NPDES permit action.

The EPA received input that the description of the socioeconomic environment focused on Timber Lake, which is upstream of Maher, rather than the affected 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 environment was broader. To address this comment, the EPA added additional statistics to include Corson County throughout the EA.

Comments received regarding Tribal consultation, treaty rights and trust resources are addressed at Responses 9, 10 and 12, respectively. Comments received regarding compliance with the National Historic Preservation Act are addressed at Response 8.

In response to comments received and additional information reviewed, the EPA made additions to the Final EA to inform its decision but did not make any revisions to the NPDES permit. 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.

EPA Response 8. National Historic Preservation Act:

Section 106 of the National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. § 306108) requires federal agencies, including the EPA, to consider the effects of an undertaking on historic properties and provide the Advisory Council on Historic Properties a reasonable opportunity to comment on the undertaking. The implementing regulations of the NHPA can be found at 36 C.F.R. part 800. An “undertaking,” as defined at 36 C.F.R. § 800.16(y), includes projects requiring a federal permit. Therefore, the issuance of an NPDES permit constitutes an undertaking.

The EPA determined that this undertaking has the potential to affect historic properties and initiated the Section 106 process. The EPA identified the Standing Rock Sioux Tribe and Cheyenne River Tribe as consulting parties who may have special expertise in identifying

historic properties and areas of cultural significance that may be adversely affected by the undertaking.

The Area of Potential Effects (APE) is the geographic area within which an undertaking may cause alterations in the character or use of historic properties and is influenced by the scale and nature of the undertaking. The EPA determined that the APE for this undertaking consists of the footprint of the Maher production area and its discharge points into High Bank Creek. As discussed in Response 4 (High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water), the proposed action of issuing an NPDES permit would authorize discharges from Maher only during extremely rare high-precipitation events, beyond what the Facility's containment structures can detain from a 25-year, 24-hour rainfall event. In such an event, any pollutants discharged would be immediately diluted by high flows in High Bank Creek due to runoff from surrounding areas in the watershed and would not disturb any historic properties outside the APE. For this reason, areas downstream of the Maher Facility were not included in the APE. Although the area under control of the Maher Facility includes fields designated for land application of animal waste, those fields are not included within the APE because, as agricultural crop fields, they have already been tilled and disturbed with respect to any pre-existing historic properties.

The NHPA's implementing regulations require federal agencies to make a reasonable and good faith effort to identify historic properties within the APE and evaluate the potential direct, indirect, and cumulative effects to historic properties by the undertaking. The EPA made a reasonable effort to identify historic properties in the APE by reviewing existing information on known historic properties; considering past planning, research, and studies; and searching for properties listed, or eligible for listing, in the National Register of Historic Places. This search revealed ten sites in Corson County and five in Dewey County, with the nearest historic property approximately ten miles from the APE in the town of Timber Lake, South Dakota. None of the sites are within the APE and would therefore not be impacted by any discharges. At the suggestion of Standing Rock Sioux Tribal staff, the EPA met with Dr. Mafany Mongoh from Sitting Bull College on July 31, 2025, who provided insights into culturally sensitive resources and directed the EPA to the THPO for further information. The EPA found no past federal agency actions in the area, indicating no existing information on historic properties. It also sought input from knowledgeable parties, including THPOs, Tribal Councilpersons, and Tribal environmental staff, who identified culturally significant areas as well as plant and animal species, ensuring the proposed alternative would minimize impacts on these resources. These efforts revealed no potential historic properties within the APE.

The EPA assessed the magnitude and nature of the undertaking, federal involvement, and potential effects on historic properties. The federal role is limited to issuing an NPDES permit,

which does not authorize new ground disturbance within the APE, as the Facility is already constructed and has operated without an NPDES permit since 2020. The permit aims to bring the Facility into compliance with the CWA, controlling discharges from the CAFO production area and land application areas. The NPDES permit restricts allowable runoff and direct precipitation to storm events exceeding a 25-year, 24-hour rainfall event. Such discharges would occur during high-volume storm events in the High Bank Creek drainage, diluting any potential discharges. The NPDES permit (Alternative 2) is expected to improve water quality in High Bank Creek more effectively than no action (Alternative 1) by limiting wastewater discharge, requiring setbacks and safeguards, and implementing a nutrient management plan. This permit is likely to reduce pollutants in stormwater runoff, improving water quality in High Bank Creek. Given the distance of the nearest identified historic property, lack of any identified historic properties in the APE, and the anticipated water quality improvements, the EPA determined that the undertaking will not adversely affect any cultural resources or historic properties.

The EPA conducted NHPA compliance in good faith by actively engaging in communication efforts with the Tribes and seeking their input on culturally significant resources and historic properties, recognizing the Tribes' special expertise in assessing the eligibility of properties with religious and cultural significance. The EPA initiated communication with the Standing Rock Tribe and Cheyenne River Tribe in a timely manner, with Tribal and NHPA consultation offered in April 2024. See EA Section 6.1 and 1.6, Table 2. The EPA held one in-person Tribal consultation meeting and one virtual Tribal consultation meeting with the Standing Rock Sioux Tribe. *Id.* Additionally, the EPA held two community meetings to explain the permitting process. *Id.* The Cheyenne River Tribe did not request consultation in response to the EPA's offer.

Although the Standing Rock Sioux Tribe states the EPA sent only a single letter regarding NHPA consultation, the EPA attempted to communicate with the Standing Rock Sioux Tribe THPO and environmental staff before and after the initial Tribal consultation reaching out via phone and email twenty-three times to gather information on culturally significant resources and potential historic properties. See EA Section 6.1 and 1.6, Table. At the first Tribal consultation, the Tribe discussed some of its religious practices with the EPA. Tribal leadership followed up with EPA leadership after the consultation noting that the EPA should consider the Tribe's cultural practices in its Environmental Assessment. At the second Tribal consultation, the EPA sought information on culturally significant plant and animal species. As a result of this inquiry and in response to a referral from Tribal leadership and community, the EPA consulted with Dr. Mongoh who shared information regarding the presence and usage of species, family-sensitive information, geological information, and recommended continued communication efforts with THPO to gather further information on culturally sensitive resources. The EPA then made several more unsuccessful attempts to contact the Tribe's THPO via phone and email. The EPA was able

to speak with staff at the Tribe's Game & Fish Department, resulting in a referral to the Tribal Biologist, with whom the EPA spoke to identify information on culturally significant fish and terrestrial species. The EPA successfully reached the Tribe's archaeologist via phone who stated he had a GIS map composed of culturally significant areas. The EPA followed up with the Tribal Archaeologist two additional times seeking this information and has received no response to date.

While the Standing Rock Sioux Tribe asserts a lack of evidence of a Class 1, 2, or 3 survey, NHPA regulations state that a "reasonable and good faith effort to carry out appropriate identification efforts . . . may include background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. § 800.4(b)(1). A field survey is not mandatory for NHPA compliance. The EPA reviewed existing information on historic properties within the APE and considered past planning, research and studies, the nature of the undertaking, federal involvement, and potential effects. The EPA held Tribal consultation with the Standing Rock Sioux Tribe and collaborated with Tribal environmental staff, community members, and Tribal cultural resource experts to assess culturally significant resources considering the Tribe's expertise. Therefore, the EPA concludes that it has complied with the NHPA and that the NPDES permit will not adversely affect historic properties. The EPA supplemented the EA and NPDES Permit Statement of Basis to document its compliance with the NHPA, including the information above and a description of the APE.

EPA Response 9. Tribal Consultation:

The EPA acted consistently with the "[EPA Policy on Consultation with Indian Tribes](#)" (EPA Tribal Consultation Policy) in completing the EA and the NPDES permit process to date. That policy states that "[t]he U.S. Environmental Protection Agency's policy is to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions or decisions may affect Tribes. Consultation is a process to ensure meaningful and timely input by Tribal officials prior to EPA taking actions or implementing decisions that may affect Tribes."

The EPA offered Tribal consultation to the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe by letters dated April 22, 2024. Because the Cheyenne River Sioux Tribe did not accept the EPA's offer, the remainder of this response addresses the EPA's Tribal consultation process with the Standing Rock Sioux Tribe.

Overview of the EPA's Tribal Consultation Process:

The EPA implements the policy through four phases – identification, notification, input and follow-up, and in this matter conducted all four phases. The EPA identified that acting on the Facility's Clean Water Act permit application and conducting the related NEPA process might affect the Tribe, and it therefore notified the Tribe of the permit application and NEPA process

and offered the Tribe multiple opportunities to provide input. Specifically, the EPA's April 22, 2024 and September 11, 2025 letters to the Tribe offered opportunities for Tribal consultation meetings. The EPA conducted the input phase, in response to the Tribe's requests to meet, by holding government-to-government meetings with the Tribal Council on August 13, 2024 and July 7, 2025, and by receiving written input through letters from Tribal government officials. The EPA received one letter dated June 2, 2025 from the Chairwoman of the Tribal Council, and two letters dated October 17, 2025 (received October 21, 2025) from the Chairman of the Tribal Council and the Chairman of the Tribal Council's Economics Committee.¹⁴ The EPA told the Tribe's representative via email on October 21, 2025, that input would be accepted after the end of the public comment period as part of Tribal consultation.¹⁵ The EPA is conducting the final, follow-up phase of the Tribal consultation process through this document, which explains how the Tribe's input was considered by the EPA in completing the EA.¹⁶

The EPA offered Tribal consultation beginning on April 22, 2024, and ending on November 5, 2025. The EPA also provided extensions to the Tribal consultation period and the public comment period in response to requests from the Tribe. The Tribe's September 10, 2025, letter to the EPA requested a 45-day extension to the 45-day public comment period on the draft NPDES permit and draft EA scheduled to close on October 13, 2025, in order to allow more time for the new administration of the Tribal government to provide input. In response, by letter dated September 17, 2025, the EPA extended the public comment period to October 17, 2025, and extended the Tribal consultation period to October 31, 2025. The Tribe subsequently requested additional extensions, and the EPA agreed to extend the Tribal consultation period through November 5, 2025. The EPA explained, however, that it could not extend the Tribal consultation period further because of its December 1, 2025, deadline to complete the EA. To meet that deadline, the EPA explained that it needed time to complete its review of all comments received during the public comment period and any written or verbal input received through Tribal consultation, so that it could consider all comments and input in a meaningful manner. As noted above, the Tribe submitted written input through the Tribal consultation process on October 21, 2025 (via letters dated October 17, 2025).

In response to the Tribe's input during Tribal consultation meetings and in written correspondence from the Tribe, the EPA also conducted outreach outside of the Tribal

¹⁴ These letters were transmitted to the EPA by email on October 21, 2025, after the close of the public comment period.

¹⁵ October 21, 2025, email exchange from Sarah Bahrman, EPA Region 8 Water Division, and Peter Capossela, Attorney for Standing Rock Sioux Tribe re. Standing Rock Sioux Tribe comments on draft EA - NPDES permit for Maher Cattle Co.

¹⁶ This document also responds to public comments received during the public comment period. The EPA respects and acknowledges that Tribal consultation and public comment periods are separate processes, but for the sake of convenience is addressing input from both processes in this single document.

consultation process to provide more opportunities for input from Tribal members and others. The EPA hosted two community engagement meetings on the Standing Rock Sioux Reservation in Fort Yates, ND and Mobridge, SD. These occurred on July 30 and 31, 2025, respectively. The purpose of the meetings was to educate the community about the EPA's role in regulating the Maher Facility, and how to submit effective comments on a draft NPDES permit and Draft EA regarding the Facility.

Responses to the Tribe's overarching concerns:

In general, the Tribe's input during the Tribal consultation process raised concerns that the 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. The EPA's Final EA evaluated environmental impacts associated with the proposed issuance of a Clean Water Act NPDES permit to the Facility, and in doing so addressed the concerns raised by the Tribe. For example, the 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. This is because the NPDES permit would require, among other things, operations of stormwater diversion devices and manure holding lagoons to prevent pollutant discharges to High Bank Creek, prohibition of animals from coming into direct contact with surface water, required best management practices for land application of manure, litter and process wastewater to decrease impacts to High Bank Creek, and would not permit the discharge of wastewater to High Bank Creek except from the production area during a 24-hour 25-year storm event. See EA sections 2.1.2 and 4.2.1. 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.

The remainder of this response addresses specific input raised by the Tribe during Tribal consultation.

Responses to the Tribe's specific, written input received through Tribal consultation:

The EPA received written input from the Tribe's Chairwoman, by letter dated June 2, 2025, asserting that the EPA Tribal Consultation Policy requires more than one consultation meeting, and that the EPA at that time had only conducted one such meeting. The EPA disagrees with this input. The EPA acknowledges that, at the time this letter was sent, the EPA had held one Tribal consultation meeting with the Tribe regarding this matter. However, as described above, the EPA ultimately gathered input from the Tribe in two consultation meetings and through three letters

from Tribal government officials. Further, the EPA disagrees that the EPA Tribal Consultation Policy requires more than one meeting, in every matter, to gather meaningful input from Tribes. First, the EPA Tribal Consultation Policy does not impose legal requirements.¹⁷ Second, the plain language of the policy acknowledges that multiple meetings may be appropriate, but does not require it (“While consultation under this Policy generally follows the four phases and guiding principles referenced above, there is no single formula for what constitutes consultation.”; and “The input phase may be an ongoing dialogue and may consist of successive consultation meetings between EPA and Tribal officials, as needed and appropriate.”). Third, the EPA Environmental Appeals Board has held that “[t]here is no particular number of meetings required or requirement for a particular outcome of consultation. See Tribal Consultation Policy at 7 (“There is no single formula for what constitutes appropriate consultation * * *.”).¹⁸

The June 2, 2025, letter also asserts that the EPA failed to respond to a May 16, 2025 letter from the Tribe, and that by June 2025 the EPA had already made decisions about the Facility’s Clean Water Act permit application and a Finding of No Significant Impact under NEPA, all in violation of the EPA Tribal Consultation Policy, [Executive Order 13175: Consultation and Coordination With Indian Tribal Governments \(Nov. 6, 2000\)](#), and the 1996 [EPA Region 8 Policy for Environmental Protection in Indian Country](#). The EPA disagrees with this input. The EPA had replied to the Tribe’s May 16, 2025 letter by a letter to the Tribe’s Chairwoman dated May 22, 2025. Further, the EPA sent an email to the Tribe’s Chairwoman on June 3, 2025, explaining that the EPA had not made decisions about the outcome of its NEPA process. Consistent with that email, the EPA later provided public notice of the *draft* NDPES permit and the *Draft* Environmental Assessment under NEPA on August 26, 2025 – after the Tribe’s June 2, 2025, letter. The EPA had not made final decisions on either the permit or the Environmental Assessment as of June 2025.¹⁹

¹⁷ The policy states: “DISCLAIMER: This document identifies internal agency policies and procedures for EPA employees in consulting and coordinating with Indian Tribes. It is intended to improve the internal management of EPA and provide transparency on EPA’s consultation process with Indian Tribes. This Policy does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It is not binding and does not create a right or benefit, substantive or procedural, enforceable at law or in equity, against the agency, its officers or employees, or any other person.”

¹⁸ *In re Deseret Generation & Transmission Coop. Bonanza Power Plant*, 19 E.A.D. 67 at 100-101 (EAB 2024). The EAB reached this holding concerning the 2011 version of the EPA Tribal Consultation Policy, which was superseded by the current, 2023 version that the EPA applied in this matter. However, the quoted language upon which the Board relied to reach its holding appears in both versions of the policy.

¹⁹ Moreover, while the EPA acted consistently with each of the three documents cited by the Tribe, and is committed to implementing those documents according to their terms, none of the three documents are legally enforceable by the Tribe. Among other reasons, all three contain express disclaimers. See EPA Tribal Consultation Policy, Executive Order 13175, and the 1996 EPA Region 8 Policy for Environmental Protection in Indian Country.

The EPA also received written input submitted by the Tribe's Chairman, by letter dated October 17, 2025 (received October 21, 2025), asserting that the EPA violated the EPA Tribal Consultation Policy by failing to consider Tribal input on the Draft EA.²⁰ The EPA disagrees with this input. The EPA considered Tribal input, including as referenced below to the bulleted list of issues on pages 1 and 2 of the attachment to the Tribe's letter.

- “The need for EPA to comply with the regulations in effect at the time EPA published the scoping notice for this Draft EA on May 23, 2024.” See Response 7, National Environmental Policy Act (NEPA) Applicability and Review.
- “The need for a thorough environmental justice analysis.” See Response 7, National Environmental Policy Act (NEPA) Applicability and Review.
- “Consideration of cumulative impacts of an NPDES permit for Maher with other federal actions affecting the Grand River, such as the effects of Shadehill Dam; and other permitted feedlots, such as Wulf Cattle Co.” See Response 7, National Environmental Policy Act (NEPA) Applicability and Review.
- “The identification and avoidance or mitigation of impacts to natural fruits and medicinal plants along High Bank Creek and the lower Grand River.” See Response 2, Discharge Criteria; Response 3, 25-year, 24-hour Rainfall Event Information; Response 4, High Bank Creek Flow Pattern, Distance to Grand River, and Area of Potential Effect; Response 5, Monitoring Requirements; and the EPA's Final EA.
- “The health impacts of fumes from Maher Cattle Co., as well as Wulf Cattle Co.” See Response 6, CAFO Regulations Authority; Response 7, National Environmental Policy Act (NEPA) Applicability and Review; and the EPA's Final EA.
- “Consideration of Treaty rights and sovereignty over the permittee, through permit terms requiring compliance with Tribal law.” See discussion below concerning permit terms concerning Tribal sovereignty; Response 10, Tribal Treaty Rights.
- “Implementation of the process for identification, evaluation and determination of effects to historic properties and traditional cultural properties as established by the Advisory Council on Historic Preservation under section 106 of the National Historic Preservation Act.” See Response 8, National Historic Preservation Act (NHPA).
- “By letter dated September 10, 2025, the Tribe requested an additional 45 days for comment on the draft EA.” See discussion above in this Response 9. In a letter dated

²⁰ The EPA received the letter on October 21, 2025. Also, per the EPA Tribal Consultation Policy, “[t]he U.S. Environmental Protection Agency's policy is to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions or decisions may affect Tribes.” In this case, the EPA considered the Tribe's input before issuing the Final Environmental Assessment. While the EPA also considered the Tribe's input before issuing draft documents, those draft documents did not affect the Tribe, as the drafts had no legally binding effect.

September 17, 2025, the EPA extended the Tribal consultation period to October 31, 2025, and the public comment period was extended from October 13, 2025 to October 17, 2025. The Tribe subsequently requested additional extensions, and the EPA agreed to extend the Tribal consultation period through November 5, 2025. The EPA explained, however, that it could not extend the Tribal consultation period further because of its December 1, 2025 deadline to complete the Environmental Assessment.

The NPDES permit contains conditions that respond to the Tribe's input concerning the protection of Tribal sovereignty. The Tribe requested a permit condition to require the Facility to comply with all applicable Tribal laws, but the EPA concluded that it lacks legal authority under the CWA to include this permit condition. The EPA's NPDES permit issuing authority comes from section 402(a)(1) of the CWA, which provides that EPA may issue permits for "discharges of pollutants," which section 505 defines as "any addition of any pollutant to navigable waters from any point source." Under section 402(a)(1), this authority extends to the issuance of such permits A) if the discharge will comply with certain listed provisions of the CWA, or B) the discharge will meet permit conditions the Agency determines are necessary to carry out the CWA. In either instance, EPA's authority is limited to establishing conditions that meet or carry out the specific requirements of the Act. Thus, when EPA is establishing conditions under the authority in section 402(a)(1)(B), the Agency must identify a basis for those conditions within the Act or its implementing regulations. Though some provisions of the CWA do address Tribal authority (e.g., sections 510 and 518), they do not authorize EPA to require a permittee to comply with all Tribal laws.

The one provision of the CWA that approaches what the Tribe has requested is section 401 and its implementing regulations at 40 C.F.R. part 121. Section 401(a) requires "[a]ny applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters" to provide a certification from the State in which the discharge originates that the discharge will comply with certain provisions of the Act. Section 401(d) further provides that any such certification shall "set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply . . . any other appropriate requirement of State law set forth in such certification." The EPA has interpreted this provision to mean that 401 certifications must assure that the activity will comply with "water quality requirements," which are defined at 40 CFR 121.1(j) as "any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the Clean Water Act, any . . . Tribal laws or regulations implementing those sections, and any other water quality related requirement of . . . Tribal law." Where a Tribe does not have treatment as a state for CWA section 401, EPA is the certifying authority. In those situations, including currently on the Standing Rock Sioux Reservation, EPA does have authority to include

certification conditions in NPDES permit to assure compliance with the types of Tribal laws listed above. This provision does not, however, allow EPA to add a certification condition with “all applicable Tribal laws,” given that the scope of Tribal laws that may apply to Maher extends beyond water quality requirements of Tribal law.

However, the EPA included the following conditions that support Tribal sovereignty in the draft NPDES permit at the time of public notice.²¹ These are not standard permit conditions that appear in all EPA issued NPDES permits for facilities within reservations or other areas of Indian country. In other words, by including the following permit conditions, the EPA took additional steps to address the Tribe’s interests.

- Part II.B. “The issuance of this Permit does not authorize any infringement of Federal, Tribal, or local laws or regulations, any noncompliance with the authority or jurisdiction of the Tribe, or any infringement on Tribal sovereignty.”
- Part VI.A.8: “Nothing in this Permit shall preclude the right of the Tribe to adopt any standard or limitation respecting discharges of pollutants, or any requirement respecting control or abatement of pollution, that is more stringent than those required in this Permit. Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Tribal law or regulation under authority preserved by Section 510 of the [Clean Water] Act.”

Also related to Tribal sovereignty, the NPDES permit includes the following conditions that require the Facility to provide a variety of information to the Tribe about its environmental impacts within the Tribe’s reservation.

- Part VI.D.1.: Provide notice to the Tribe of certain physical changes or additions to the facility.
- Part VI.D.4.: Report to the Tribe “any noncompliance that may endanger human health or the environment, no later than twenty-four (24) hours from the time that the Permittee becomes aware of the circumstances.”
- Part IV.A.: Notice to the EPA and the Tribe of discharges into High Bank Creek.
- Part IV.B.: Notice to the EPA and the Tribe of overflow of discharge from a manure and/or wastewater storage or retention structure.
- Part IV.C.g.: Notice to the EPA and the Tribe of the analytical results of sampling of any runoff or discharge from a facility’s land application area to High Bank Creek.
- Part V.2.: Send copies of annual discharge monitoring reports to the Tribe.

²¹ The EPA was aware of the Tribe’s sovereignty concerns related to NPDES permits as a result of a prior, separate NPDES permitting matter concerning a different cattle feedlot on the Tribe’s reservation.

The Tribe raised the issue of Tribal staff having “reasonable right of entry for inspection free from intimidation” and stated that “[a]ny permit should have a limited term, and ongoing compliance monitoring by Tribal and federal officials.” Part VI.A.6 of the NPDES permit contains a provision requiring Maher to allow for inspection and entry by the EPA or an authorized representative, upon presentation of credentials and other documents as may be required by law to:

- a. Enter upon the Permittee’s premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Tribal staff can become an authorized representative of the EPA by obtaining inspector credentials from the EPA. The EPA is happy to work with Tribal staff to obtain such inspector credentials, if desired. Without such inspector credentials, the EPA does not have the authority to require access of Tribal staff. The Tribe’s own authorities may grant such access.

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.

As part of the Tribe’s input dated October 17, 2025 (received on October 21, 2025), the Tribe submitted a map from the Tribe’s Game and Fish Department showing roads and the land status on the Reservation based on the Public Land Survey System (i.e., by Section, Township, and Range). The EPA acknowledges that the land status varies across the Reservation. Regarding impacts to downstream waters, and other downstream resources, see Response 4, High Bank Creek Distance to Grand River and Potential Effects on Surface Water and Drinking Water and Response 7, National Environmental Policy Act (NEPA) Applicability and Review.

Responses to the Tribe’s specific verbal input received through Tribal consultation meetings:

During the EPA's consultation meetings with the Tribe on August 13, 2024 and July 7, 2025, the Tribe discussed several issues with the EPA's NEPA process and its concerns about Maher's impacts to the people and environment on the Reservation. Many of the same concerns were raised in written consultation input and are addressed in the section above. Remaining issues, and how the EPA considered this input in the Final EA, are explained below:

- **Input**: Other CAFOs on the Reservation were allowed to start operating without an NPDES permit, and this appeared to set an undesirable precedent. The Tribe wanted assurance that Maher will not be allowed to operate and discharge without EPA oversight.
 - **Response**: The EPA explained during consultation that federal case law prevents the EPA from requiring a producer to obtain a permit unless the facility is actually discharging.²² Maher submitted a complete application in February 2025, which became the starting point for the EPA to begin developing a draft NPDES permit and to initiate the NEPA process for this federal action.
- **Input**: It seemed EPA had already decided Maher Cattle would get an NPDES permit before completing the NEPA process.
 - **Response**: The EPA explained during both consultation meetings that it was not a foregone conclusion that Maher would receive a permit. The producer was required by a publicly viewable EPA enforcement order to submit a permit application, received prior to initiation of the Tribal consultation process, and the EPA indicated the Agency would evaluate issuance of an NPDES permit along with the alternative of not issuing a permit within the NEPA-driven environmental assessment. With respect to the enforcement order, the EPA sent two letters to the Tribe offering coordination and consultation regarding this separate compliance and enforcement process, but the Tribe did not respond to either written offer. The EPA shared the final enforcement order with the Tribe on May 20, 2024.
- **Input**: The Tribe had questions in 2024 about whether an environmental impact statement (EIS) would be most appropriate in the instance of Maher, rather than an environmental assessment. The Tribe also stated in 2025 that it would be incorrect for the EPA to issue a FONSI, but rather should issue an EIS for Maher Cattle.
 - **Response**: The EPA's preliminary determination that a FONSI is the most appropriate outcome of the EA within the NEPA process rests on the Agency's

²² See *Nat'l Pork Producers Council v. United States EPA*, 635 F.3d 738, 751 (8th Cir. 2011) (“[T]he EPA cannot impose a duty to apply for a permit on a CAFO that ‘proposes to discharge’ or any CAFO before there is an actual discharge. However, it is within the EPA's province, as contemplated by the CWA, to impose a duty to apply on CAFOs that are discharging.”).

determination that the EPA's action of issuing the NPDES permit to Maher would not cause significant impacts to the human environment and an EIS is not necessary for this action in accordance with NEPA section 106(b)(2), 42 U.S.C. 4336(b)(2) and 40 C.F.R. § 6.206. See Response 7, National Environmental Policy Act (NEPA) Applicability and Review; the preliminary FONSI and the EPA's Final EA.

- Input: The Tribe shared examples of traditional Tribal practices being compromised by non-Tribal citizen activities within the reservation, which they said include operations like Maher. These traditional practices include hunting and gathering within open spaces and Vision Quest, a rite of passage for young men. The notion of "boundaries" for practices such as these is not about geography but about spirituality. People continue to move into sacred areas on the reservation where traditional practices are observed, and this squeezes out the space needed to observe them.
 - Response: The EPA added this input to the discussion of social and cultural impacts within the Final EA; however, as noted in the EA, there is no difference among the alternative actions in how they affect this concern, because all three alternatives assume that Maher will continue operating within the footprint it occupied at the time of the EPA's EA analysis and any permitting decision. None of the evaluated alternatives would affect the property boundaries of the Facility, or the boundaries of the Maher Facility or any other land within the Tribe's reservation. See Response 10. Tribal Treaty Rights, Treaty rights related to land ownership.
- Input: To ensure the EPA considered the best available information in the EA about historic preservation and culturally sensitive species, the Tribe urged the EPA to consult with Sitting Bull College's Research Review Board and the Tribe's Game, Fish and Parks Department to identify important species.
 - Response: The EPA met on July 31, 2025, with Dr. Mafany Mongoh, the Tribe's Institutional Review Board Chair and Professor at Sitting Bull College, and included information obtained from him in the Final EA. As explained during NHPA consultation, the EPA made multiple attempts to talk with the Tribal Historic Preservation Officer for the Tribe, Mr. Courtney Yellow Fat. The EPA talked with staff of the Tribe's Game and Fish Department and with the Tribe's Biologist, Dr. Michael Gutzmer, to discuss species that could be affected by the EPA's action. The EPA learned that several species of special significance are known to have habitat in the High Bank Creek watershed, including many species discussed in the Tribe's June 2, 2025, letter as well as the burrowing owl. The details of these conversations can be found in Section 3.3 of the EA, and Section

4.3 of the EA explains the EPA's conclusion that the proposed action will not have an impact on these species compared to the no action alternative. The EPA's communications and attempts to communicate with Dr. Mongoh, Mr. Courtney Yellow Fat, Dr. Gutzmer and others are recorded in separate memos to the file²³.

In summary, the EPA has explained above and in the EA how it considered the input received during the Tribal consultation process. The EPA seriously considers that input. In some instances, the EPA has not agreed with the Tribe's input and has explained its reasoning, while in others the EPA has included conditions in the NPDES permit to address the Tribe's concerns. Consistent with the EPA Tribal Consultation Policy, the EPA strives through consultation for consensus or a mutually desired outcome. But as the EPA Environmental Appeals Board has explained, "[t]here is no ... requirement for a particular outcome of consultation."²⁴

No changes were made to the permit in response to relevant comments. The EA was revised as described above to more thoroughly account for the input the EPA received through Tribal and NHPA consultation.

EPA Response 10. Tribal Treaty Rights:

The EPA considered potential impacts on Tribal treaty rights in completing action on the EA. The [EPA Policy on Consultation With Indian Tribes](#) states that "EPA recognizes the importance of respecting Tribal treaty or similar rights and its obligation to do so. In situations where Tribal treaty or similar rights may be affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding such rights during consultation." Further, the "[EPA Policy on Consultation with Indian Tribes: Guidance for Discussing Tribal Treaty or Similar Rights](#)" (February 2025) states that "[t]he U.S. Environmental Protection Agency recognizes the importance of respecting Tribal treaty or similar rights and its obligation to do so," and acknowledges that "[t]he U.S. Constitution defines treaties as part of the supreme law of the land, with the same legal force as federal statutes."

The EPA received input regarding treaty rights through Tribal consultation and through public comment. During Tribal consultation, the EPA received a letter dated June 2, 2025, from the Chairwoman of the Tribal Council, and a letter dated October 17, 2025 (received October 21, 2025) from the Chairman of the Tribal Council. Both letters raised the Tribe's treaty rights.

²³ November 25, 2025, Memo to the File from Michael Boeglin, Wastewater Section Supervisor, EPA Region 8 re. EPA Record of Communication with Dr. Mongoh Regarding Culturally Sensitive Species and Resources; November 25, 2025, Memo to the File from Michael Boeglin, Wastewater Section Supervisor, EPA Region 8 re. EPA Record of THPO Communication with SRST.

²⁴ *In re Deseret*, 19 E.A.D. at 100 (rejecting claim that the EPA acted inconsistently with the EPA Tribal Consultation Policy by not making changes to an EPA permit requested by a Tribe).

During the public comment period, the EPA received comments from individual Tribal members which raised the Tribe's treaty rights.

Treaty rights related to water quality and air quality

The Tribe asserts that it holds treaty rights to hunt, fish and gather under the 1851 Treaty of Fort Laramie²⁵ and the 1868 Treaty of Fort Laramie.²⁶

Individual Tribal members also asserted the following treaty rights during the public comment process: "Standing Rock is a Treaty Tribe under the 1851 and 1868 Fort Laramie Treaties. The Tribe has a Treaty right to a clean and safe environment. Any Discharge from Maher Cattle violates the Treaties."²⁷

Overall, the Tribe's input during the Tribal consultation process and public comments raised concerns that the 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. As explained above in Response 9, the 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

²⁵ 11 Stat. 749 (1851). See Article V ("the aforesaid Indian nations ... do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described."). The 1851 treaty does not explicitly reference rights to gather, and the EPA is not aware of any federal court decision interpreting the treaty to include an explicit or implicit right to gather. Without deciding the existence or scope of the Tribe's treaty rights, and for purposes of considering potential impacts to treaty rights in this matter, the EPA assumes for the sake of argument that a right to gather within the Tribe's reservation exists.

²⁶ 15 Stat. 635 (1869). The 1868 treaty does not explicitly reference the right to fish, and explicitly references the right to hunt only in regards to off-reservation lands. See, e.g., Article XI. However, the United States Supreme Court has held that those off-reservation hunting rights were abrogated by an 1877 Act of Congress. *U.S. v. Sioux Nation of Indians*, 448 U.S. 371, 382-83, 423 (1980). Also, Article XVII appears to abrogate certain portions of prior treaties with the Sioux Tribes, but not treaty rights to hunt and to fish within their reservations. Further, the EPA is not aware of any federal court decisions finding that Congress abrogated the rights to hunt and fish within relevant Sioux reservations under the 1851 treaty, including pursuant to the 1868 treaty or subsequent Congressional acts reducing the size of the relevant Sioux reservations (e.g., 19 Stat. 254 (1877) and 25 Stat. 888 (1889)). Moreover, the United States Supreme Court has held that "[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them, unless such rights were clearly relinquished by treaty or have been modified by Congress." *U.S. v. Dion*, 476 U.S. 734, 738 (1986). Without deciding the existence or scope of the Tribe's treaty rights, the EPA assumes for purposes of considering potential impacts to treaty rights in this matter that those treaty rights continue to exist.

²⁷ Commenters did not explain which provisions of the treaties create those rights, and the treaties do not explicitly do so. The EPA is not aware of any federal court decisions finding that the treaties implicitly create those treaty rights. Nevertheless, as explained in this Response 10, the EPA does not anticipate that issuance of the NPDES permit would negatively impact any asserted treaty rights.

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 concludes that issuance of the permit would not adversely affect any treaty rights asserted by the Tribe.

Treaty rights related to land ownership ^{ee}

The Tribe's letters dated June 2, 2025, and October 17, 2025 (received October 21, 2025) also asserted treaty rights to land ownership, both inside and outside of the Tribe's reservation. Regarding comments asserting that the Tribe still owns lands outside of its reservation pursuant to the Fort Laramie Treaties of 1851 and 1868, and inside the reservation that are owned by Maher Cattle and other non-tribal members, the EPA is not aware of any federal court decision affirming those assertions. In contrast, federal courts have held that the boundaries of tribal lands recognized by the Fort Laramie Treaty of 1851 were reduced by the Fort Laramie Treaty of 1868, and that the treaty lands established pursuant to the Fort Laramie Treaty of 1868 were reduced by the Congressional Act of February 28, 1877.²⁸ For example, in describing the 1877 Act, the United States Supreme Court stated: "[t]he Act had the effect of abrogating the earlier Fort Laramie Treaty [of 1868], and of implementing the terms of the Manypenny Commission's 'agreement' with the Sioux leaders."²⁹ Further, the text of the Congressional Act of March 2, 1889³⁰ indicates that all lands outside of the reservations created in the 1889 Act were restored to the public domain.

The EPA acknowledges continued claims by the Tribe to land ownership outside of its reservation subject to the Fort Laramie Treaties of 1851 and 1868, to ownership of land within its reservation that was sold to non-Tribal members subject to Congressional acts, and its dispute of the Supreme Court's decision in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), as well as other longstanding treaty disputes between this and other tribes and the United States. In its role as a regulatory agency, the EPA lacks the authority to resolve these disputes.

No changes were made to the permit or EA in response to relevant comments.

EPA Response 11. Culturally Significant Plant and Animal Species:

The EPA received several comments that describe community members' observations of plants and animals found with adverse changes relative to past observations, at undisclosed locations downstream of the Facility along High Bank Creek and in the High Bank Creek watershed. With

²⁸ 19 Stat. 254 (1877).

²⁹ *United States v. Sioux Nation of Indians*, 448 U.S. 371, 382-83, 423 (1980).

³⁰ 25 Stat. 888 (1889).

respect to the proposed EPA action of issuing an NPDES permit to Maher, Section 3.4 of the EA assesses plant and animal species known to be present in the vicinity of the Maher Facility and that are recognized by the Tribe as significant to the Tribe's culture. Environmental consequences of the action alternatives on these species are evaluated in Section 4.3.5 of the EA. As explained in the evaluation, water quality in High Bank Creek downstream of the Maher Facility would likely improve with the proposed action of issuing an NPDES permit, resulting in fewer discharges and fewer impacts to any of these species with habitat in or near High Bank Creek, as compared to the no action alternative. To the extent that any of the plants and animals described in the comments were found in or near High Bank Creek downstream of the Maher Facility, the limitations and management practices imposed by an NPDES permit would be an improvement over previous operating and monitoring conditions of the Facility when no permit requirements were in place.

No changes were made to the permit in response to relevant comments. Expanded discussion of management practices that would be required by a permit, as relevant for protection of species habitat, was added to the No Action alternative in Section 4.3.5 of the EA.

EPA Response 12. The Federal Trust Responsibility to Federally Recognized Indian Tribes:

The Tribe's letter dated October 17, 2025 (received October 21, 2025) from the Chairman of the Tribal Council raised concerns about the impacts of the Facility on Tribal trust resources, such as lands held in trust for the Tribe, water, fish, wildlife habitat and riparian vegetation such as wild fruits.

The EPA recognizes and is committed to upholding the Federal government's general trust responsibility to Tribes. The EPA acts consistently with the general trust responsibility by implementing the statutes it administers.³¹ In this case, the EPA acted consistently with the general trust responsibility to the Tribe by properly implementing NEPA and the CWA with respect to the Maher Facility operations, and by considering the Tribe's interests and input. In performing the Environmental Assessment under NEPA, the EPA considered the potential environmental impacts of issuance of the proposed CWA NPDES permit – including impacts raised by the Tribe to trust resources³² – and determined that permit issuance would likely

³¹ See, e.g., *In re Deseret*, 19 E.A.D. at 96 (“[A]n agency fulfills its general trust responsibility by complying with the statutes and regulations it is entrusted to implement. *Morongo Band of Mission Indians*, 161 F.3d at 574 (“[A]lthough the United States does owe a general trust responsibility to Indian tribes, unless there is a specific duty that has been placed on the government with respect to Indians, this responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes.”); *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) (“[A]dequate procedures were provided by the Clean Air Act and the EPA regulations to fulfill [the United States' trust] responsibility [to tribes].”).”

³² Without deciding the scope of the Tribe's trust resources, the EPA assumes for purposes of considering potential impacts in this matter that all resources asserted by the Tribe are trust resources.

improve water quality in High Bank Creek compared to the no action alternative of the EPA not issuing a permit to Maher Cattle as it continues to operate. See Response 9, Tribal Consultation. The EA also determined that permit issuance would result in no change to air quality. See EA section 4.2.2. As a result, issuance of the proposed Clean Water Act NPDES permit would not negatively impact trust resources asserted by the Tribe.

The federal government can also be subject to a “conventional trust relationship” with a tribe as to a particular trust asset, pursuant to which the federal government may be required to adhere to certain common law trust principles.³³ In this case, though, the Tribe does not appear to assert a conventional trust relationship. Even if it did, the EPA is not aware of language in the 1851 and 1868 Fort Laramie Treaties, or in any statute or regulation, that would create a conventional trust relationship to protect the trust resources asserted by the Tribe. But even if a conventional trust relationship existed, the EPA has not acted inconsistently with it, because the EPA determined that issuance of the NPDES permit would likely improve water quality in High Bank Creek and would result in no change in air quality.

No changes were made to the permit or EA in response to relevant comments.

EPA Response 13. 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 sores from swimming:

Several commenters mentioned their observations of dirty water, foam on surface waters, fish sores, other observations of aquatic species, impacts to vegetation (e.g., berry abundance, choke cherries, plums, sage) and sores on people’s skin after swimming. Many of these comments did not provide information on the location of the observation making it difficult for the EPA to assess any association between this observation and a permitting action for Maher. In response to these comments, the EPA provides the following:

1. Turbidity in surface waters

Turbidity in surface waters can cause surface waters to appear dirty. A high concentration of solids suspended in the water column result in high turbidity. This is often measured in NPDES permits as total suspended solids (TSS). Turbidity has several common sources. These can include sediment and other solids in runoff from agricultural fields, roads, construction sites, and other natural and anthropogenic sources. The land uses area around High Bank Creek and the Grand River are primarily agricultural. This results in almost ubiquitous sources of turbidity across the watershed.

³³ See, e.g., *Arizona v. Navajo Nation*, 599 U.S. 555 (2023); *In re Deseret*, 19 E.A.D. at 95-96; *Ute Indian Tribe of the Uintah & Ouray Indian Rsrv. v. United States DOI*, No. 2:21-cv-00573-JNP-DAO, 2023 LX 91088 (D. Utah Sep. 26, 2023).

As discussed in other EPA Responses, 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 TSS. See Responses 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, 3 - 25-year, 24-hour Rainfall Event Information. 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 TSS. This will allow the EPA to know whether the production area is contributing TSS to High Bank Creek and inform whether to require additional controls. See Response 5 - NPDES Permit Monitoring Requirements.

2. Foam on surface waters

Foam on surface waters is commonly caused by natural sources like decomposing organic matter. Also, high phosphorus levels can cause foam on surface water. Phosphorus is a pollutant in animal waste and therefore present on the Maher Facility. As discussed in other EPA Responses, an NPDES permit would require controls on discharges of pollutants significantly limiting such discharges. This includes controls of phosphorus through the NMP 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 concentrations. See Responses 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, 3 - 25-year, 24-hour Rainfall Event Information. 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 phosphorus. This will allow the EPA to know whether the production area is contributing phosphorus to High Bank Creek and inform whether to require additional controls. See Response 5 - NPDES Permit Monitoring Requirements.

3. Fish sores and other impacts to aquatic species

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. As discussed in other EPA Responses, 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 TSS. See Responses 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, and 3 - 25-year, 24-hour Rainfall Event Information. 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 TSS. This will allow the EPA to know whether the production area is contributing TSS to High Bank Creek and inform whether to require additional controls. See Response 5 - NPDES Permit Monitoring Requirements.

Some commenters mentioned other observations regarding aquatic life, such as dead fish, a deformed turtle, and “gunk” on fish eyes. The EPA has published recommended water quality criteria to protect aquatic life under Section 304(a) of the Clean Water Act. The EPA reviewed this list of criteria for pollutants common at CAFOs and identified ammonia, nitrogen, phosphorus, and biochemical oxygen demand (BOD₅), which impacts recommended criteria for dissolved oxygen (DO) in receiving streams). As discussed in other EPA Responses, an NPDES permit would require controls on discharges of pollutants significantly limiting such discharges. This includes controlling these pollutants through the NMP 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 concentrations. See Responses 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, 3 - 25-year, 24-hour Rainfall Event Information. 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 ammonia, nitrate, nitrite as N, TKN, nitrogen, phosphorus, and BOD₅. This will allow the EPA to know whether the production area is contributing these pollutants to High Bank Creek and inform whether to require additional controls, if necessary. See Response 5 - NPDES Permit Monitoring Requirements.

4. Impacts to vegetation and fruit production

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 NDPEs permit. One commenter indicated they believe high nitrate is affecting berry production. Nitrates and other pollutants can impact vegetation and fruit production. As discussed in other EPA Responses, 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. See Responses 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, 3 - 25-year, 24-hour Rainfall Event Information. 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. See Response 5 - NPDES Permit Monitoring Requirements.

5. Sores on skin from swimming

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 for pollutants common at CAFOs and identified *E. coli*. As discussed in other EPA Responses, an NPDES permit would require controls on discharges of pollutants significantly limiting discharges of *E. coli*. This includes controlling these pollutants through the NMP 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 concentrations. See Response 1 - Comments arguing that a permit should not be issued, 2 - Discharge Criteria, 3 - 25-year, 24-hour Rainfall Event Information. 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 *E. coli*. This will allow the EPA to know whether the production area is contributing *E. coli* to High Bank Creek and inform whether to require additional controls, if necessary. See Response 5 - NPDES Permit Monitoring Requirements.

No changes were made to the EA or NPDES permit in response to relevant comments.