

US EPA ARCHIVE DOCUMENT

May 29, 2009

Deborah Jordan  
Director, Air Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MORONGO  
BAND OF  
MISSION  
INDIANS



A SOVEREIGN NATION

Re: Request to Create a Separate Nonattainment Area for the Morongo Indian Reservation.

Dear Ms. Jordan:

This letter, submitted on behalf of the Morongo Band of Mission Indians (“Morongo” or “Tribe”), requests that the U.S. Environmental Protection Agency (EPA or Agency) create a separate nonattainment area for the Morongo Reservation or, alternatively, move the western boundary of the Coachella Valley Nonattainment Area in the Salton Sea Air Basin westward to include the Morongo Reservation.

This request has a significant history, which provides the context for your consideration of the accompanying detailed justification (Attachment A) submitted in support of the Tribe’s request. On November 6, 2003, EPA modified the boundaries of nonattainment areas in Southern California so that the Morongo Reservation “moved” from the Coachella Valley Nonattainment Area within the Salton Sea Air Basin (see Figure 1) to the South Coast Air Basin, which had a more restrictive ozone attainment designation. In its decision to modify the nonattainment area boundaries, EPA failed to acknowledge the existence of the Morongo Reservation as a separate, sovereign jurisdiction and failed to recognize the major implications for the Tribe of moving the area boundary. The Tribe’s economic and governmental interests, specifically its inherent authority with respect to reservation air quality planning and its nascent regulatory and permitting authority under the Tribal Authority Rule, were supposed to be protected by the EPA until the Tribe could formally assume these responsibilities. This was not done, as evidenced by the lack of EPA consultation with the Tribe during the 2003 boundary change rulemaking, as required under Executive Order 13175 and the federal trust responsibility.

As explained in Attachment A, the significant negative effects of the 2003 boundary change on the Tribe’s interests will be further exacerbated as the result of the State of California’s recent petition to EPA to “bump up” the ozone classification for the South Coast Air Basin from “severe-17” to “extreme.” In short, the “bump up” to a 10 tpy major source threshold for ozone precursor emissions will thwart or significantly impair the Tribe’s plan to develop a tribal air permit program for minor sources by increasing the number of facilities potentially subject to Nonattainment New Source Review (NNSR) and thereby increasing the use and cost of Morongo Environmental Department resources, and will severely compromise the Tribe’s capacity to engage in

economic development in the absence of a program for obtaining emission reduction credits for on-Reservation facilities subject to NNSR requirements under the lower major source threshold. This latter aspect places on-Reservation facilities at a distinct disadvantage relative to similar facilities operating outside the Reservation.

The Tribe's request that EPA create a separate nonattainment area for the Morongo Reservation would address these tribal concerns, and is a logical and technically sound initiative that addresses the nine factors suggested in EPA guidance for establishing or changing nonattainment area boundaries. Moreover, although the accompanying rationale for a separate nonattainment area for the Morongo Reservation is compelling, the accompanying discussion of the nine factors also would support a determination by EPA to move the western boundary of the Coachella Valley Nonattainment Area to include the Morongo Reservation.

Important context for this request is the debate over the original basis for locating the boundary between the South Coast Basin, as it was called at that time<sup>1</sup> and before nonattainment areas were created, and the Southeast Desert Basin (before the creation of the current Salton Sea Air Basin). In their June 1968 staff report,<sup>2</sup> ARB "staff recommended that the boundary be moved to the west edge of the San Gabriel Mountains rather than its originally proposed location at the ridge of these mountains." The rationale was that the communities of Banning and Beaumont, both located on the west side of the Morongo Reservation, "share in the general air pollution problems of the northern portion of the Coachella Valley." The then-existing Riverside County Air Pollution Control District believed that these communities should be included in the desert portion of Riverside County, not as they are now, which is in the South Coast Basin portion of the county.

In 1996,<sup>3</sup> the ARB discussed moving the boundary of the South Coast Air Basin towards the east when they were creating the Salton Sea Air Basin out of part of the prior Southeast Desert Air Basin. The move proposed to add the San Geronio Pass area, which includes Beaumont, Banning and the Morongo Reservation, to the South Coast Air Basin. This move was requested by the South Coast Air Quality Management District (AQMD) because they argued that the San Geronio Pass area had climate and geography more similar to the adjacent area of the SoCAB than to the adjacent area of the Southeast Desert Air Basin (which preceded the current Salton Sea and Mojave Desert Air Basins).<sup>4</sup> This discussion included the understanding that changing air basin boundaries would also affect the geographical definitions of nonattainment areas. The proposed changes were documented in an ARB staff report.<sup>5</sup>

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<sup>1</sup> ARB. *Minutes of the 8th Meeting*, November 20, 1968.

<sup>2</sup> ARB. *Proposal for the Division of California into Air Basins*, June 1968.

<sup>3</sup> ARB. *Board Item Summary*, Board Meeting Item 96-4.2, May 30, 1996.

<sup>4</sup> The AQMD's discussion was supported by limited analysis; we believe that the enclosed analysis demonstrates that the Morongo Reservation should be its own nonattainment area.

<sup>5</sup> ARB. *Proposed Amendments to Divide the Southeast Desert Air Basin and to Modify the Boundary of the South Coast Air Basin and Proposed Amendments to the Related Agricultural Burning Regulations*, May 30, 1996.

In the 1996 ARB report, staff noted that if it had not been for the AQMD request, the San Geronio area, which includes the Morongo Reservation, would have become a part of the Salton Sea Air Basin when it was formed from the prior Southeast Desert Air Basin, and hence, the Morongo Reservation would have been included in the later designation of the Coachella Valley Nonattainment Area.

Accordingly, the Tribe respectfully requests that EPA fully consider and support the Tribe's request and justification for creation of a separate nonattainment area for the Morongo Reservation. However, should EPA determine that creation of such an attainment area is not approvable, the Tribe requests that EPA adjust the boundary of the Coachella Valley Nonattainment Area to include the Morongo Reservation. In either event, we expect that EPA will closely consult with the Tribe before reaching a final decision.

We look forward to your response and working with EPA on these important issues. Coordination of your agency's consultation with the Tribe should be arranged through Ms. Liz Bogdanski, Director of the Morongo Environmental Protection Department. Questions or issues of a legal nature should be directed to Stephen Quesenberry at Karshmer & Associates, our General Counsel. Questions or issues of a technical nature should be directed to Gary Rubenstein at Sierra Research.

Sincerely,



Robert Martin, Chairman  
Morongo Band of Mission Indians

cc: Liz Bogdanski, Director, Environmental Protection Department  
Colleen McKaughan, EPA Region 9  
Stephen Quesenberry, Karshmer & Associates  
Gary Rubenstein, Sierra Research

## Attachment A

### Request to Create a Nonattainment Area for the Morongo Indian Reservation

#### EXECUTIVE SUMMARY

On November 6, 2003, EPA modified the boundaries of nonattainment areas in Southern California so that the Morongo Reservation “moved” from the Coachella Valley Nonattainment Area within the Salton Sea Air Basin to the South Coast Air Basin, which had a more restrictive ozone attainment designation. The State of California petitioned EPA on September 27, 2007 to “bump up” the ozone nonattainment designation for the South Coast Air Basin from “severe-17” to “extreme.”

With regard to jurisdictional boundaries, EPA did not acknowledge the existence of the Morongo Reservation as a separate, sovereign jurisdiction when the nonattainment area boundary was changed in 2003, and did not recognize the major implications for the Tribe of moving the area boundary. The Tribe’s economic and governmental interests, specifically its inherent authority with respect to reservation air quality planning and its nascent regulatory and permitting authority under the Tribal Authority Rule, were supposed to be protected by the EPA until the Tribe could formally assume these responsibilities. This was not done, as evidenced by the lack of EPA consultation with the Tribe during the 2003 boundary change rulemaking, as required under Executive Order 13175 and the federal trust responsibility.

The Morongo Band of Mission Indians (Tribe) requests that EPA create a Morongo Nonattainment Area that is geographically identical to the reservation. If that is not approvable for some valid reason, in the alternative the Tribe requests that EPA move the western boundary of the existing Coachella Valley Nonattainment Area to include the Morongo Reservation. Leaving the Morongo Reservation within the South Coast Nonattainment Area will impose additional, unanticipated delays in developing Morongo’s air program, including the Tribe’s plan to implement a tribal air permit program for minor sources within the next year. First, by reducing the major source “potential to emit” threshold for ozone precursor (i.e., NOx and ROC) emissions from 25 tpy to 10 tpy under the 8-hour average ozone standard, the reclassification will increase the number of facilities potentially subject to Nonattainment New Source Review (NNSR) requirements, thus increasing the use and cost of Morongo staff resources, as well as facility resources. Second, the number of future facilities subject to Title V would be significantly increased if the threshold of 25 tpy is reduced to 10 tpy. Finally, under the current nonattainment area designation, the threshold for the applicability of General Conformity requirements is similarly 10 tpy, requiring many more projects to demonstrate that their emissions of criteria pollutants will not impede progress toward attainment with national ambient air quality standards.

For both existing facilities and future facilities subject to NNSR, there is currently no system in place through which such facilities can obtain emission reduction credits. Unless EPA allows such sources to use emission reduction credits from the adjacent air basins, either through its own program or through a tribal permitting program, such facilities will be placed at a disadvantage relative to similar facilities operating outside of the Reservation.

Based on the nine factors suggested in EPA guidance, analysis of the relevant technical data support establishment of the Morongo Reservation as its own nonattainment area. If EPA believes that a separate nonattainment area is not legally defensible, then the Morongo Reservation should be made a part of the Coachella Valley Nonattainment Area. The factor of jurisdictional boundaries suggests that the reservation should logically be its own nonattainment area. The factors pertaining to low population density and lack of urbanization, meteorology, geography, hydrology, and level of emission source control show that the reservation is substantially different than the South Coast Air Basin,<sup>1</sup> and holds more in common with the Coachella Valley Nonattainment Area. The remaining factors dealing with air quality, causes of nonattainment, lack of local emission sources, low level of local traffic, and growth rates are neutral on commonality with either the Coachella Valley or South Coast Nonattainment Areas, and hence EPA should treat these factors as supportive of the tribal request to make the Morongo Reservation its own nonattainment area.

## INTRODUCTION

On November 6, 2003, the U.S. Environmental Protection Agency (EPA or Agency) modified the boundaries of the Salton Sea Air Basin (SSAB), so that the Morongo Reservation “moved” from the Coachella Valley Nonattainment Area in the SSAB to the South Coast Air Basin (SoCAB), which had a more restrictive ozone attainment designation. One of the important parameters that this action changed for the Morongo Band of Mission Indians (Tribe) is that the major source definition threshold dropped from the previous 25 tons per year (tpy) level down to 10 tpy. That change to the lower major source threshold is further exacerbated by the September 27, 2007 request from the South Coast Air Quality Management District and the State of California<sup>2</sup> that EPA “bump up” the nonattainment designation of the SoCAB from “severe-17” to “extreme” with respect to the 8-hour average ozone standard.

Keeping the Morongo Reservation in a nonattainment area with such a restrictive major source threshold means that the Tribe cannot implement a meaningful Minor Source permitting program because the regulation would be applicable only to a small set of potential future emitting sources whose emissions would be lower than 10 tpy of both

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<sup>1</sup> The South Coast Nonattainment Area is geographically identical to the South Coast Air Basin.

<sup>2</sup> The South Coast Air Quality Management District described the request in the June 1, 2007 Board-approved 2007 Air Quality Management Plan, and initiated the request September 27, 2007. The California Air Resources Board (ARB) passed Resolution 07-41 on September 27, 2007 to forward the request for redesignation to EPA.

NOx and VOC. Several additional years will be needed for the Tribe to develop a Major Source permitting program and gain approval for such a program from EPA. During this interim period, the Tribe would not have permitting authority over its own Morongo Casino Cogeneration Plant, which now operates under EPA's Part 71 Title V permitting authority.

The purpose of this document is to present the logical and technically based rationale for EPA to create a Morongo Nonattainment Area. It will be shown that the reservation has substantial differences from the South Coast Air Basin and warrants its own nonattainment area. It makes no sense for the reservation to remain inside the South Coast Nonattainment Area, which is the principal source of the emissions that cause the monitored violations of the ozone National Ambient Air Quality Standards (NAAQS) on Tribal lands, and EPA has authority under Clean Air Act Section 110(k)(6) to create a Morongo Nonattainment Area. At a minimum, EPA should adjust the Coachella Valley Nonattainment Area boundary to include the Morongo Reservation.

## RATIONALE

The following discussion is organized according to the nine factors, taken from USEPA guidance.<sup>3</sup>

### Factor 1: "Air quality data"

Ozone, generated by atmospheric reactions of its precursor emissions of NOx and VOC over periods of hours, is by its nature a regional pollutant. High levels that exceed the 8-hour ozone NAAQS are widespread throughout the SoCAB, and, because of the overwhelmingly dominant role of transport,<sup>4</sup> are also widespread throughout the Reservation and the Coachella Valley Nonattainment Area, as well as the rest of the SSAB.

As can be seen in Figure 1, the average annual number of exceedances of the current 8-hour ozone NAAQS is highest at the Redlands monitoring station, and similarly high at the two stations west on the SoCAB<sup>5</sup> side of Redlands and four of the five stations to the east of Redlands (see Figure 2 for the locations of the monitoring stations). The 11-year average of 32 exceedances measured at the Indio monitoring station are substantial, but only half the number measured at the other monitoring stations. Figure 3 shows that the relative magnitude and temporal trends of the number of ozone exceedances are

<sup>3</sup> USEPA. *Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards*, memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, Office of Air and Radiation, to Regional Administrators, December 8, 2008.

<sup>4</sup> South Coast Air Quality Management District (SCAQMD). *Air Quality Management Plan, Chapter 8 -- Future Air Quality -- Desert Nonattainment Areas, 1997*, <http://www.aqmd.gov/aqmp/97aqmp/chapters/mchap8.html>.

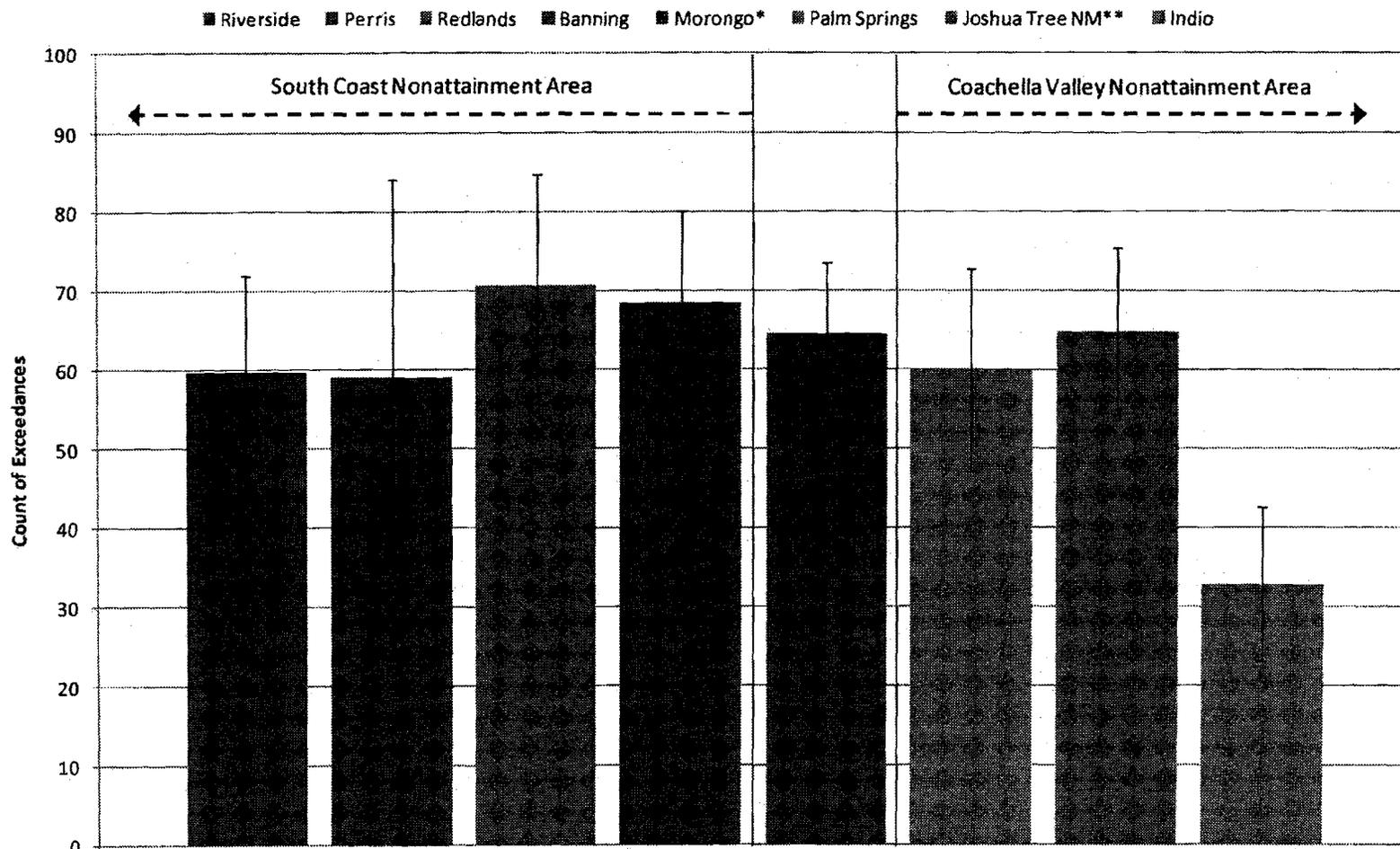
<sup>5</sup> The Morongo Reservation and monitoring station are currently located in the South Coast Air Basin and South Coast Nonattainment Area.

comparable for most of the stations, especially in 2005 when the highest number of exceedances were recorded at Banning, Palm Springs, Joshua Tree, and Riverside.

Figure 4 shows that the average annual maximum 8-hour ozone concentration is relatively uniform between the monitoring stations, and the highest occurs at Redlands. Figure 5 shows the relatively uniform and synchronous temporal changes between the stations from year to year. Similarly, Figures 6 and 7 show the same uniformity between stations and from year to year of the annual 4<sup>th</sup> highest 8-hour ozone concentrations, respectively.

Because the spatial pattern of these stations covers both the east side of the SoCAB and Coachella Valley Nonattainment Area, the magnitude and temporal pattern of ozone concentration suggest that the Morongo Reservation should be established as its own nonattainment area.

**Figure 1. Average Annual Number of Excedances of the 8-Hour Ozone NAAQS (0.075 ppm) from 1998-2008**



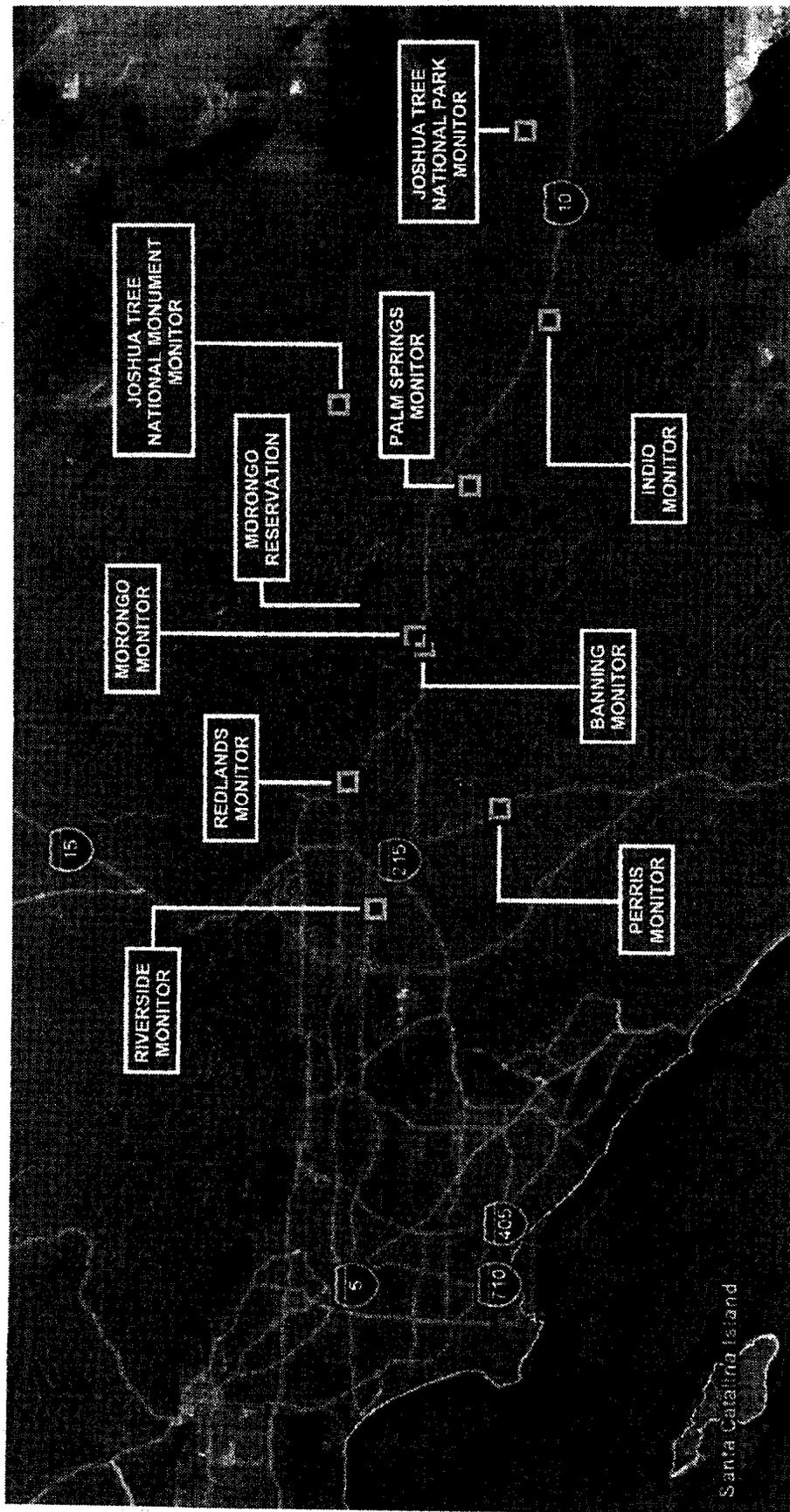
\* Data for the Morongo site only exist for 2006-2008.

\*\* Full site name is Joshua Tree National Monument (AQ5 site #060719002).

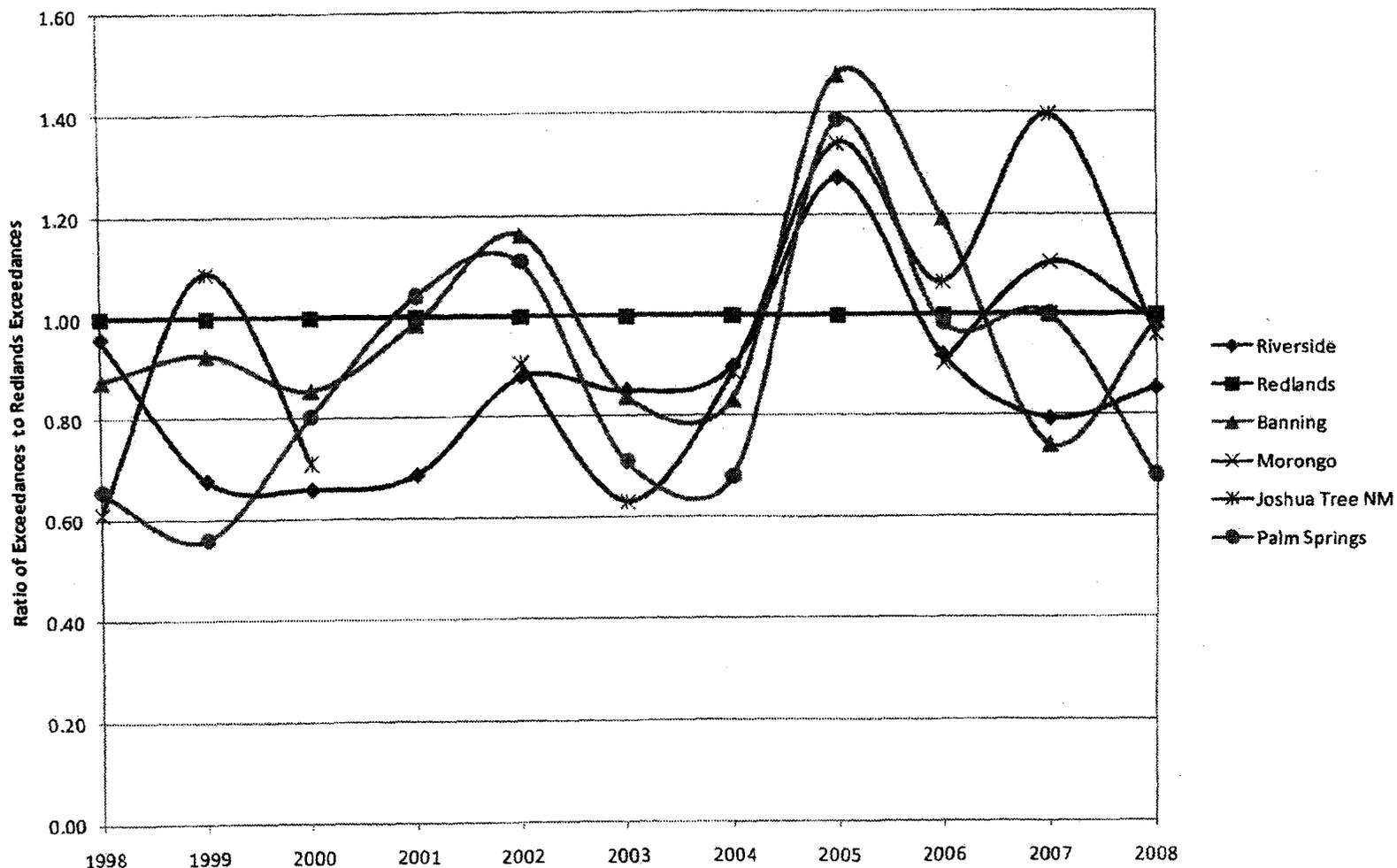
Notes: The vertical line across the top of each bar represents one standard deviation around the arithmetic mean.

The Joshua Tree National Monument data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.

**Figure 2**  
**Monitoring Station Locations**

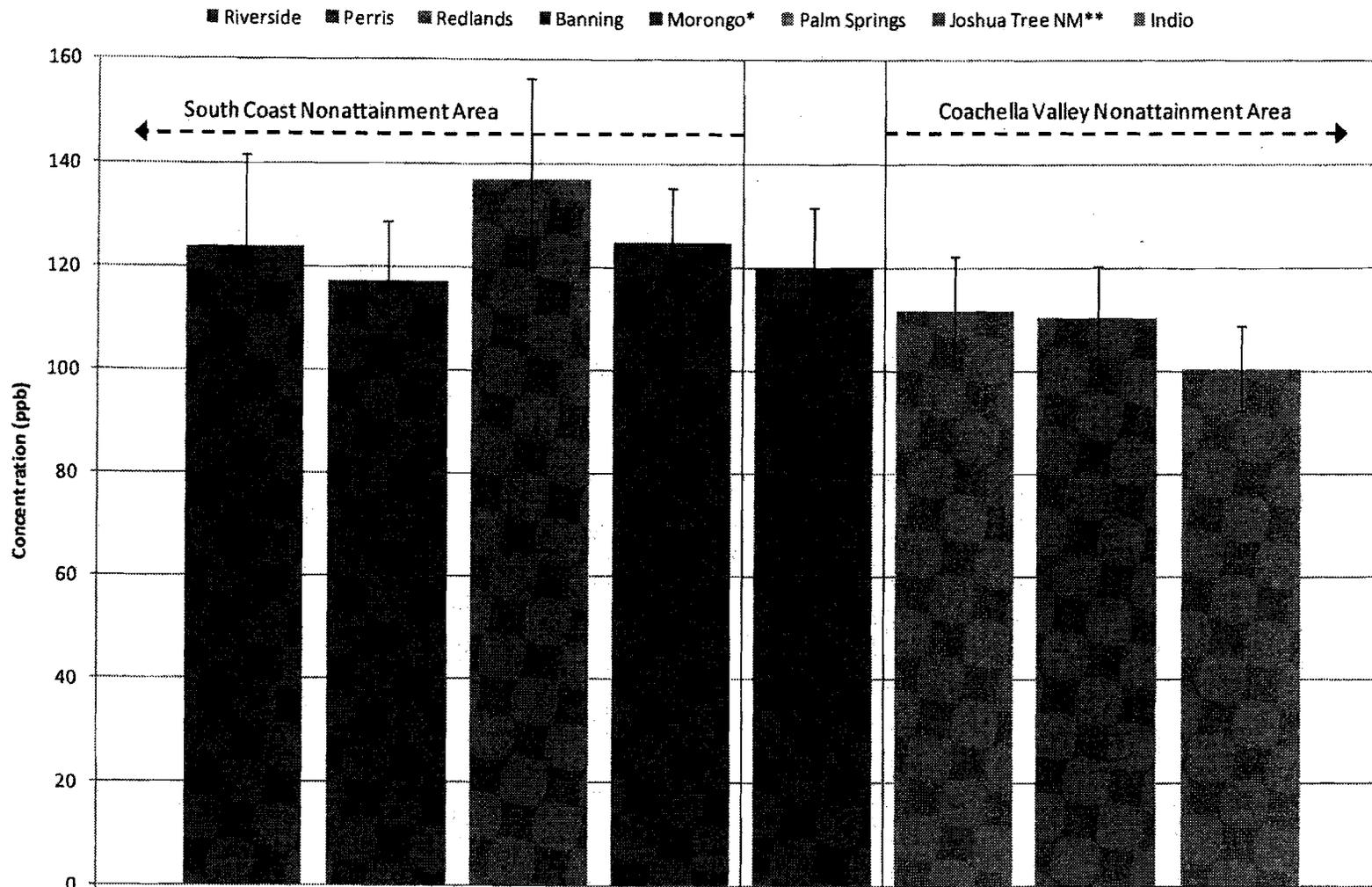


**Figure 3. Average Annual Number of Exceedances of the 8-Hour Ozone NAAQS (0.075 ppm) by Year Normalized to Redlands**



Notes: The Perris data were excluded due to high volatility of the concentrations from year-to-year, making comparisons with the other sites difficult.  
 The Joshua Tree NM data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.  
 The Indio data were excluded due to the much lower number of exceedances and the low correlation with the other sites.

Figure 4. Average Annual Maximum 8-hour Ozone Concentration from 1998-2008



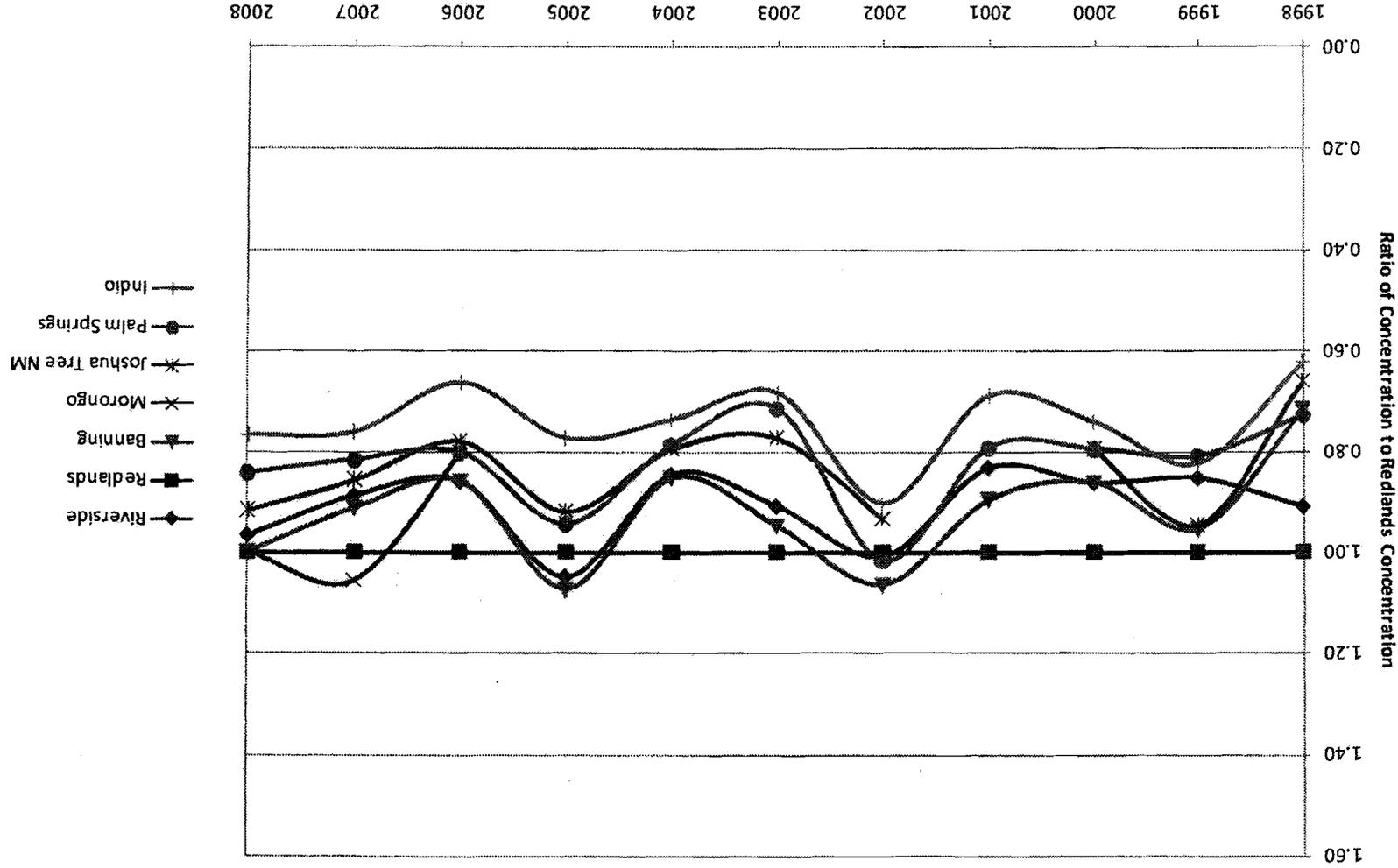
\* Data for the Morongo site only exist for 2006-2008.

\*\* Full site name is Joshua Tree National Monument (AQ5 site #060719002).

Notes: The vertical line across the top of each bar represents one standard deviation around the arithmetic mean.

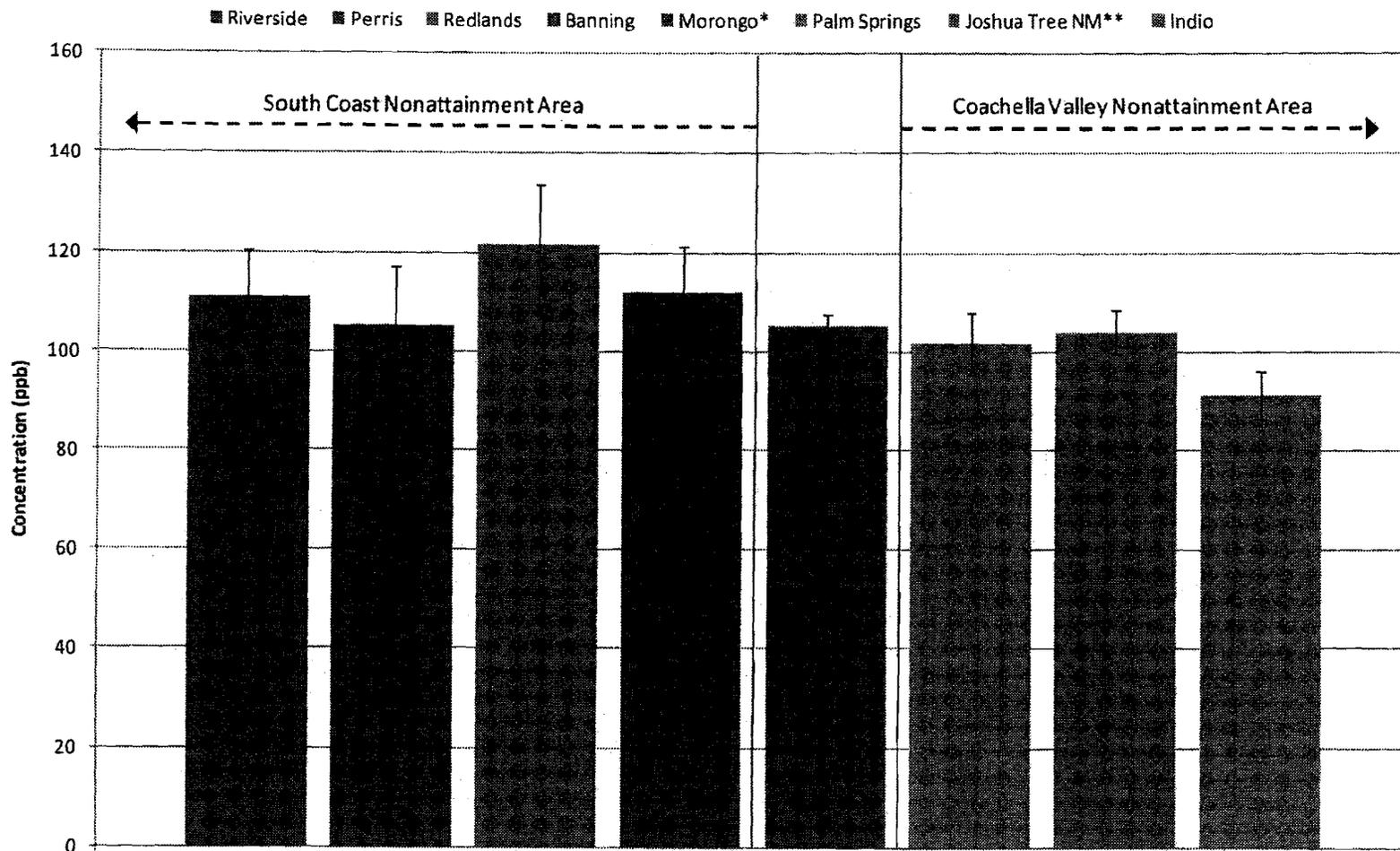
The Joshua Tree National Monument data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.

Figure 5. Annual Maximum 8-hour Average Ozone Concentration Normalized to Redlands



Notes: The Perris data were excluded due to high volatility of the concentrations from year-to-year, making comparisons with the other sites difficult. The Joshua Tree NM data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.

**Figure 6. Average Annual 4<sup>th</sup> Highest 8-hour Ozone Concentration Averages from 1998-2008**



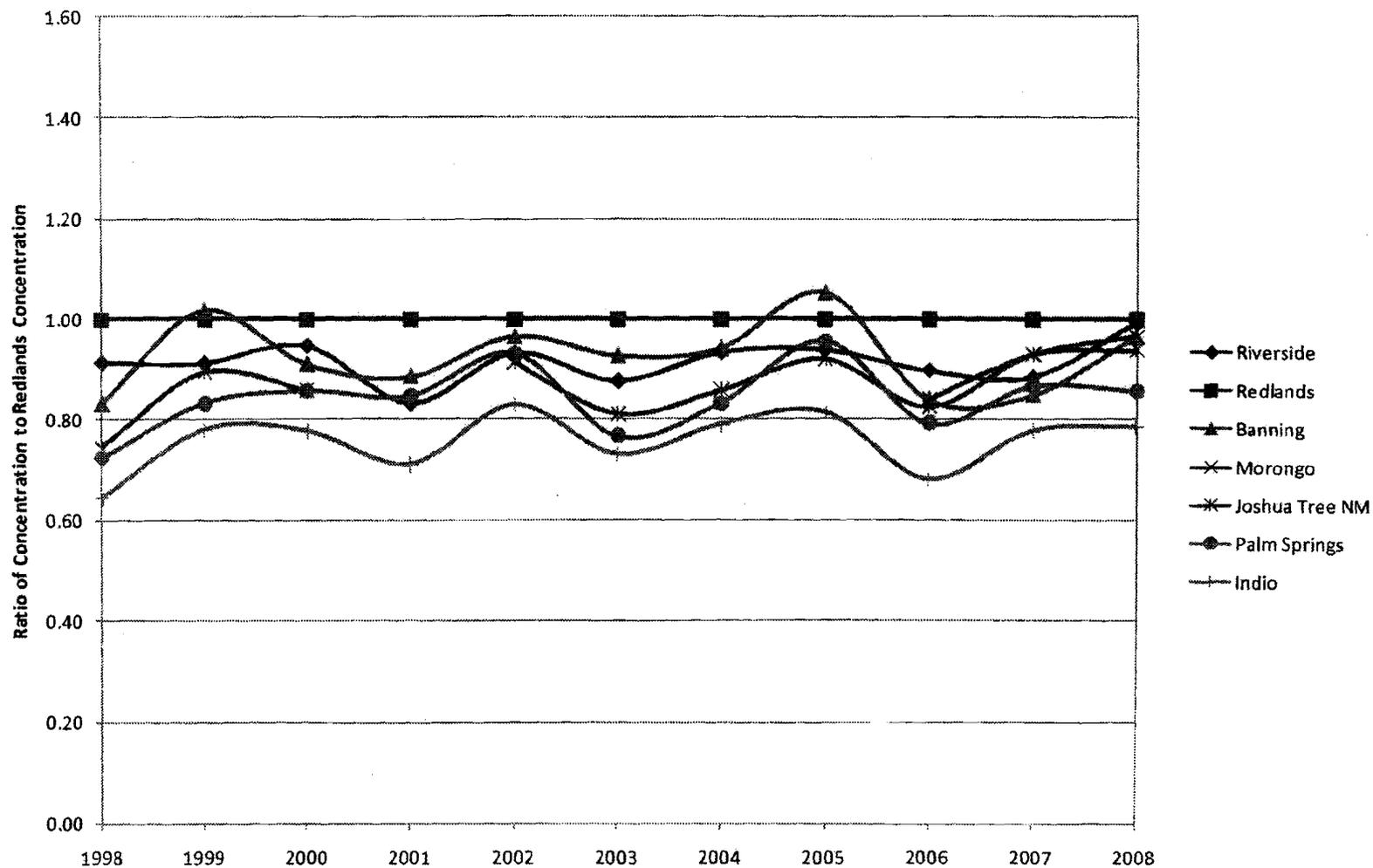
\* Data for the Morongo site only exist for 2006-2008.

\*\* Full site name is Joshua Tree National Monument (AQ5 site #060719002).

Notes: The vertical line across the top of each bar represents one standard deviation around the arithmetic mean.

The Joshua Tree National Monument data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.

Figure 7. Annual 4<sup>th</sup> Highest 8-hour Average Ozone Concentration Normalized to Redlands



Notes: The Perris data were excluded due to high volatility of the concentrations from year-to-year, making comparisons with the other sites difficult.  
 The Joshua Tree NM data for 2001 were excluded because they were very inconsistent with the other years and sites and appear erroneous.

Factor 2: "Emissions data (location of sources and contribution to ozone concentrations)"

Due to the sparse population of the Morongo Reservation, the limited emissions from the few sources on the Reservation are close to only a few nearby receptors. This same sparse distribution of emission sources and nearby receptors characterizes the other Indian reservations and communities located throughout most of the SSAB. The greater Palm Springs area, which contains the densest population within the SSAB, is itself relatively isolated from other SSAB communities, and covers a small fraction of the SSAB's surface. Far different is the close proximity of the dense residential areas of the SoCAB to transportation, commercial, and industrial emission sources clustered in the urban centers of the SoCAB, including not only the Los Angeles CMSA, but also the nearby Riverside-San Bernardino-Ontario Metropolitan Statistical Area.

Table 1 presents a comparison of emissions from the Morongo Reservation and two portions of Riverside County in the SoCAB and SSAB, separated into stationary, area, and mobile source categories. The emissions in both the SoCAB and SSAB portions of Riverside County are well in excess of the emissions on Tribal lands and, as a result, these data suggest that the Morongo Reservation should be established as its own nonattainment area.

| Table 1<br>Emission Inventories*  |   |                 |       |       |                  |
|---|---|-----------------|-------|-------|------------------|
| Location and Source Type  | Pollutant                               |                 |       |       |                  |
|   | NOx                                     | SO <sub>2</sub> | CO    | VOC   | PM <sub>10</sub> |
| Morongo On-Reservation  | Daily Emissions <sup>a</sup> (tons/day) |                 |       |       |                  |
| Stationary Sources  | 0.066                                   | 0.0039          | 0.26  | 0.058 | 0.032            |
| Area Sources  | 0.28                                    | 0.023           | 0.11  | 0.025 | 0.020            |
| On-Road Mobile Sources  | 2.71                                    | 0.005           | 3.9   | 0.46  | 0.14             |
| Total Morongo Reservation   | 3.05                                    | 0.031           | 4.30  | 0.54  | 0.19             |
| Riverside County - SSAB   | Daily Emissions <sup>b</sup> (tons/day) |                 |       |       |                  |
| Stationary Sources  | 0.9                                     | 0.0             | 0.3   | 1.9   | 0.2              |
| Area Sources  | 0.6                                     | 0.0             | 1.3   | 4.8   | 15.0             |
| On-Road Mobile Sources  | 44.2                                    | 0.3             | 69.1  | 8.3   | 2.3              |
| Other Mobile Sources  | 7.9                                     | 0.2             | 22.1  | 4.2   | 0.5              |
| Total Riverside County SSAB   | 53.5                                    | 0.6             | 92.8  | 19.1  | 18.0             |
| Riverside County - SoCAB  | Daily Emissions <sup>b</sup> (tons/day) |                 |       |       |                  |
| Stationary Sources  | 4.1                                     | 0.4             | 1.6   | 8.4   | 2.4              |
| Area Sources  | 2.2                                     | 0.1             | 10.4  | 16.9  | 36.4             |
| On-Road Mobile Sources  | 72.0                                    | 0.6             | 313.6 | 28.0  | 3.6              |
| Other Mobile Sources  | 24.3                                    | 0.4             | 69.9  | 14.3  | 1.6              |
| Total Riverside County SoCAB  | 102.5                                   | 1.3             | 395.5 | 67.7  | 44.0             |
| * Summation differences result from rounding errors.  |   |                 |       |       |                  |
| <sup>a</sup> Sierra Research emission inventory for on-reservation sources only.  |   |                 |       |       |                  |
| <sup>b</sup> ARB. Almanac Emission Projection Data, 2006 Estimated Annual Average Emissions,<br><a href="http://www.arb.ca.gov/app/emsinv/emseic1_query.php?F_DIV=-4&amp;F_YR=2006&amp;F_SEASON=A&amp;SP=2007&amp;F_COAB=Y&amp;F_AREA=CO&amp;F_CO=33&amp;F_DD=Y">http://www.arb.ca.gov/app/emsinv/emseic1_query.php?F_DIV=-4&amp;F_YR=2006&amp;F_SEASON=A&amp;SP=2007&amp;F_COAB=Y&amp;F_AREA=CO&amp;F_CO=33&amp;F_DD=Y</a> . |   |                 |       |       |                  |

Factor 3: "Population density and degree of urbanization (including commercial development)"

The Morongo Band of Mission Indians has a low population (see Table 2), a low population density throughout the reservation, and a general lack of urbanization. These same characteristics of the Morongo Reservation are found throughout much of the Coachella Valley Nonattainment Area and the larger SSAB, except within the fast-growing retirement cities such as Palm Springs and Palm Desert. As one moves west from the Morongo Reservation, population density and degree of urbanization rapidly increase upon reaching the nearby Riverside-San Bernardino-Ontario Metropolitan Statistical Area, and reach the highest levels found in the Los Angeles CMSA upon

moving further west towards the coast. Table 2 shows the population density of the Morongo Reservation, Coachella Valley, Riverside-San Bernardino-Ontario Metropolitan Statistical Area, Riverside County, Los Angeles County, and Los Angeles-Long Beach-Santa Ana Metropolitan Statistical Area. The population density on the reservation is far lower than that in any of the other nearby geographical areas, and is closest to that found in the Coachella Valley within the Coachella Valley Nonattainment Area. Thus, from the perspective of population density and degree of urbanization, the data support establishment of the Morongo Reservation as its own nonattainment area.

| Geographical Area                                 | Population                                  | Population Growth Rate (%/yr) | Area (sq. miles)    | Population Density (mi <sup>-2</sup> ) |
|---|---|-------------------------------|---------------------|--|
| Morongo Reservation                               | 954 <sup>a</sup>                            | 0.7 <sup>a</sup>              | 49 <sup>a</sup>     | 20                                     |
| Coachella Valley                                  | 158,143 <sup>b</sup> - 411,000 <sup>c</sup> | 4.7 <sup>c</sup>              | 303 <sup>b</sup>    | 522 - 1,356                            |
| Riverside-San Bernardino-Ontario MSA <sup>d</sup> | 4,026,135 <sup>e</sup>                      | 3.9                           | 27,298 <sup>e</sup> | 148                                    |
| Riverside County                                  | 2,073,571 <sup>e</sup>                      | 4.3 <sup>c</sup>              | 7,207 <sup>e</sup>  | 288                                    |
| Los Angeles County                                | 9,941,000 <sup>f</sup>                      | 0.8                           | 4,061 <sup>e</sup>  | 2,448                                  |
| Los Angeles-Long Beach-Santa Ana MSA              | 12,950,139 <sup>e</sup>                     | 0.9                           | 4,850 <sup>e</sup>  | 2,670                                  |

<sup>a</sup> Encyclopedia, Morongo Indian Reservation, <http://www.nationmaster.com/encyclopedia/Morongo-Indian-Reservation>. Growth rate based on estimate of 375 residences and annual increase of 2-3 (email from Director, Environmental Protection Department, February 17, 2009).

<sup>b</sup> Coachella Valley, California, <http://www.city-data.com/city/Coachella-Valley-California.html>

<sup>c</sup> Coachella Valley Economic Partnership, *Population Trends*, data for 2005, [http://cvep.com/pop\\_trends.shtml](http://cvep.com/pop_trends.shtml).

<sup>d</sup> MSA = Metropolitan Statistical Area.

<sup>e</sup> US Census Bureau. QuickFacts, <http://quickfacts/census.gov>.

<sup>f</sup> USEPA. Letter from Wayne Natri, Administrator, Region 9, to Martin Robert, Chairperson, Morongo Band of Mission Indians, August 21, 2008, [http://www.epa.gov/pmdesignations/2006standards/rec/letters/T\\_Morongo\\_Band\\_of\\_Mission\\_Indians\\_EPA\\_MOD.pdf](http://www.epa.gov/pmdesignations/2006standards/rec/letters/T_Morongo_Band_of_Mission_Indians_EPA_MOD.pdf).

**Factor 4: "Traffic and commuting patterns"**

Traffic and commuting throughout most of the Morongo Reservation are at low levels, while non-tribal regional traffic and commuting are dominated by the presence of Interstate 10 crossing through the Banning Pass on the southern boundary of the reservation (see Table 3). Similarly, traffic and commuting levels throughout most of the SSAB are light, but heavy traffic is concentrated on I-10, especially where it is adjacent

to the Palm Springs to Palm Desert corridor of resort hotels and residential developments. Moderate levels of traffic and commuting are found in the SSAB along State Highways 86 and 111 (see Table 3) running from the north end of the Salton Sea southeast along the west and east sides of the sea, respectively, and into Imperial County.

The SoCAB, in comparison, is characterized by the highest levels of traffic and commuting found in the nation. These high levels are found throughout the basin, including on the road system in nearby San Bernardino and Riverside. In fact, the east-west traffic on interstate-level highways I-10, SR60, and SR91 is concentrated onto the I-10 alone at the east end of the SoCAB because Banning Pass is the only major east exit from the basin into the SSAB. Table 3 provides traffic counts from several key roads in the geographical areas under consideration. The low levels of traffic throughout the reservation are more consistent with the lower levels of traffic found on non-freeways in the SSAB and the SoCAB (e.g., see lower levels of travel observed on SH-86 and SH-111 in the SSAB and SH-74 in the SoCAB). Freeway traffic levels are much higher than non-freeway traffic levels in both basins.

| Table 3<br>Traffic Counts  |                     |
|--|---------------------|
| Road   | AADT <sup>a,b</sup> |
| I-10 across Morongo Reservation  | 130,000             |
| SH-86  | 3,150 -28,000       |
| SH-111   | 1,900 – 32,000      |
| I-10 Riverside County SoCAB  | 91,000 – 235,000    |
| I-10 Riverside County SSAB   | 27,000 – 79,000     |
| SH-74 (between SH-79 and SH-371)   | 2,800 – 32,000      |
| <sup>a</sup> Annual Average Daily Traffic Count  |                     |
| <sup>b</sup> California Department of Transportation. <i>2005 Annual Average Daily Truck Traffic on the California State Highway System</i> , November 2006. |                     |

Factor 5: “Growth rates and patterns”

Both the Morongo Reservation and the adjacent Coachella Valley are mostly open space, containing relatively isolated communities connected by Interstate 10 and a few other major roads. Because both areas are home to only a few industries, their growth is tied to infrequent special developments such as the Morongo Casino and retiree residential projects.

As can be seen in Table 2, population growth has been high throughout Riverside County on both sides of the Morongo Reservation, while low on the reservation (and in the Los Angeles-Long Beach-Santa Ana MSA).

Factor 6: "Meteorology (weather/transport patterns)"

The meteorology and climatology of the Morongo Reservation, like its air quality, are dominated by the transport of air from the SoCAB, essentially the same as the continuation of the same transport through the Coachella Valley except that higher winds across the reservation result from its proximity to Banning Pass, which funnels air flow between the basins (i.e., relatively low speed daily sea breeze from the west, and relatively high speed wintertime Santa Ana desert winds from the east). The SoCAB is characterized by a substantial frequency of marine layer accompanied by calm winds under an inversion that leads to cooler temperatures, but higher concentrations of pollutants. The reservation rarely experiences the coastal marine layer, and the Coachella Valley and SSAB never experience it. Consequently, the Morongo Reservation has meteorology more similar to that of the Coachella Valley Nonattainment Area than to most of the South Coast Air Basin. Meteorology and atmospheric transport characteristics suggest that the reservation should be its own nonattainment area.

Factor 7: "Geography/topography (mountain ranges or other air basin boundaries)"

Because geography and topography are important factors in defining the boundaries of the SoCAB and SSAB, the Morongo Reservation clearly has far more in common with the SSAB. Most of the SoCAB is a coastal area heavily influenced by the proximity of the Pacific Ocean and generally westerly flow of air, accounting for the frequent sea breezes during the day and strength of the marine layer. In contrast, the ringing of the SoCAB by the San Gabriel, San Gorgonio, and San Jacinto mountain ranges prevents this marine layer from affecting the environment that dominates from the Banning Pass through the Morongo Reservation and eastward-southeastward through the entire SSAB.

On the large spatial scale of hydrologic regions, the Morongo Reservation is located within the Colorado River Basin Hydrologic Region, one of the ten hydrologic water study areas of California. The Colorado River Hydrologic Region has as its western boundary the crest of the San Bernardino, San Jacinto, Santa Rosa, and Peninsular Ranges, separating it completely from the South Coast Basin Hydrologic Region.

Within this Region there are planning areas and hydrologic units and subunits. The Morongo Reservation is situated directly within the San Gorgonio Hydrologic Subunit of the Whitewater Hydrologic Unit (WHU). The Whitewater River watershed (from which the Tribe derives its surface water rights) is generally situated in Riverside County within the Coachella Valley Planning Area of the Colorado River Basin Regional Water Quality Control Board. The Whitewater watershed is generally defined by the boundaries of the WHU, as described in the Water Quality Control Plan for the Colorado River Basin, Region 7 (2006). The Whitewater River Watershed Municipal Stormwater Program Stormwater Management Plan (2001–2006) describes the watershed as follows: "much of the watershed consists of sparsely populated mountains, desert, and agricultural lands. Urbanized areas are principally located on the valley floor between Banning and Indio along Interstate 10, and from Palm Springs to Coachella along State Highway 111."

The western boundaries of the above-referenced planning areas and hydrologic units generally coincide with or are slightly to the west of the Morongo Reservation's western boundary, thus making it clear that, from a geographic and hydrological standpoint, the Reservation has more in common with the Salton Sea Air Basin than the South Coast Air Basin.

This information serves to emphasize the connection between the Reservation and the Coachella Valley Area. The Reservation and Coachella Valley have surface water rights that derive from the same watershed (Whitewater) and share groundwater that flows in a generally southeasterly direction spilling from the San Gorgonio Basin aquifer into the Coachella Valley.

Geography, topography, and hydrology information all suggest that the reservation should logically be its own nonattainment area.

Factor 8: "Jurisdictional boundaries (e.g., counties, air districts, existing nonattainment areas, Reservations, metropolitan planning organizations (MPOs))"

The most important jurisdictional boundaries for nonattainment area definition and designation in the vicinity of the Morongo Reservation are those of the reservation itself, and that between the SoCAB and SSAB. The boundary between San Bernardino and Riverside Counties is located just a short distance north of the northern boundary of the reservation. Jurisdictional aspects of the requested change in boundary are simplified by the following facts:

- The reservation and the Coachella Valley Nonattainment Area are both located in the common jurisdiction of Riverside County; and
- Air quality management responsibilities of the South Coast Air Quality Management District for the South Coast Air Basin and the Coachella Valley Nonattainment Area will not change whether the reservation is located within the former or latter portions of the District's jurisdiction.

Jurisdictional boundaries suggest that the reservation should logically be its own nonattainment area.

With regard to jurisdictional boundaries, EPA did not acknowledge the existence of the Morongo Reservation as a separate, sovereign jurisdiction when the nonattainment area boundary was changed in 2003, and did not recognize the major implications for the Tribe of moving the area boundary. The Tribe's economic and governmental interests, specifically its inherent authority with respect to reservation air quality planning and its nascent regulatory and permitting authority under the Tribal Authority Rule, were supposed to be protected by the Agency until the Tribe could formally assume these responsibilities. There was no EPA consultation with the Tribe during the 2003 boundary change rulemaking, as was required under Executive Order 13175 and the federal trust responsibility.

#### Factor 9: "Level of control of emission sources"

The key difference between the level of control of emission sources is that a source in the Coachella Valley portion of the SSAB must emit at least 25 tons per year of a nonattainment criteria pollutant or precursor to be subject to the more stringent federal New Source Review and Title V federal operating permit requirements for a major source, compared to the requirements for a minor source, whereas sources in the SoCAB emitting only 10 tons per year or more of a nonattainment criteria pollutant or precursor are subject to the more stringent requirements for major sources. Mobile source emission control requirements are identical in the SSAB and SoCAB. As indicated above, air quality on the Morongo Reservation is dominated by transport from the SoCAB, where the 10 ton per year federal threshold applies.

Large emission reductions are needed in the SoCAB to allow that air basin to make reasonable further progress towards attainment, and also to allow the SSAB to reach attainment because of the dominant role played by transport from the SoCAB into the SSAB. Only a modest level of emission reductions is needed from sources on the Morongo Reservation and throughout the SSAB to prevent local sources from impeding reasonable further progress towards attainment.

#### CONCLUSION

Based on the nine factors suggested in EPA guidance and analysis of the available data, the Morongo Reservation logically and technically should be its own Morongo Nonattainment Area that is geographically identical to the reservation. The factors pertaining to low population density and lack of urbanization, meteorology, geography, hydrology, and level of emission source control show that the reservation is substantially different than the South Coast Air Basin,<sup>6</sup> and holds more in common with the Coachella Valley Nonattainment Area. The remaining factors dealing with air quality, causes of nonattainment, lack of local emission sources, low level of local traffic, and growth rates are neutral on commonality with either the Coachella Valley or South Coast Nonattainment Areas, and hence it EPA should treat these factors as supportive of the tribal request to make the Morongo Reservation its own nonattainment area.

Leaving the Morongo Reservation within the South Coast Nonattainment Area will impose additional, unanticipated delays in developing Morongo's air program, including the Tribe's plan to implement a tribal air permit program for minor sources within the next year. First, by reducing the major source "potential to emit" threshold for ozone precursor (i.e., NO<sub>x</sub> and ROC) emissions from 25 tpy to 10 tpy under the 8-hour average ozone standard, the reclassification will increase the number of facilities potentially subject to Nonattainment New Source Review requirements, thus increasing the use and cost of Morongo staff resources, as well as facility resources. Second, the number of

<sup>6</sup> The South Coast Nonattainment Area is geographically identical to the South Coast Air Basin.

future facilities subject to Title V would be significantly increased because the threshold of 25 tpy is reduced to 10 tpy. Finally, reducing the threshold for the applicability of General Conformity requirements from 25 tpy to 10 tpy would require many more projects to demonstrate that their emissions of criteria pollutants will not impede progress toward attainment with national ambient air quality standards.