

US EPA ARCHIVE DOCUMENT



**PECHANGA INDIAN RESERVATION**  
*Temecula Band of Luiseño Mission Indians*

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February 23, 2012

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Mark Macarro

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Kenneth Perez  
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Tribal Treasurer:  
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Tribal Secretary:  
Louise Burke

**VIA FEDERAL EXPRESS**

Jared Blumenfeld  
Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105-3901

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

Dear Mr. Blumenfeld:

This will respond, on behalf of the Pechanga Band of Luiseño Mission Indians ("Pechanga" or "Tribe"), to the Regional Administrator's letter of December 9, 2011. That letter offered an opportunity to submit additional information for EPA to consider in its designation decision affecting the Pechanga Indian Reservation.

In a previous submittal to EPA,<sup>1</sup> Pechanga requested that EPA create a separate nonattainment area for the Pechanga reservation. Failing that, Pechanga requested that its territory be included in the San Diego Nonattainment Area. These requests were supported by a detailed technical justification based on application of the nine factors suggested by EPA guidance for establishing or changing nonattainment area boundaries. The letter also presented information about the history of the nonattainment area boundaries in the area. One key element of this history is the failure of the agencies to consult with the Tribe in any meaningful way with regard to this issue.<sup>2</sup>

EPA has proposed to modify Pechanga's recommended area designation and to designate Pechanga's area of Indian country as nonattainment along with the San Diego Air Basin surrounding state area.<sup>3</sup> The Technical Support Document<sup>4</sup> (TSD) provides details regarding EPA's preliminary decision.

As described in the TSD, EPA used a five-factor analysis to support its preliminary decision.

<sup>1</sup> Letter from Mark Macarro to Deborah Jordan, June 23, 2009

<sup>2</sup> Letter from Mark Macarro to Deborah Jordan, June 23, 2009

<sup>3</sup> Letter from Jared Blumenfeld to Mark Macarro, December 9, 2011

<sup>4</sup> *Technical Support Document for the 2008 NAAQS Designations*

EPA did not approve Pechanga's preferred approach because EPA's analysis failed to substantively evaluate, much less give proper weight to, the fifth factor in the five-factor analysis: Jurisdictional Boundaries.<sup>5</sup> If the jurisdictional boundary criterion is given its proper weight, and the sovereignty of the tribal government is given due deference, EPA's multi-factor analysis, and EPA's policy for implementing the 8-hour ozone standard in Tribal areas, supports Pechanga's preferred approach: designation of Pechanga's tribal territory as a separate nonattainment or attainment area.

The analysis in the TSD did not consider relevant facts.

EPA recently published guidance specifically addressing its policy for designations for Tribal lands.<sup>6</sup> This guidance addresses Pechanga's precise situation, where EPA has received a tribal request for separate designation. The same five factors discussed above are used to determine whether it is appropriate to use tribal boundaries to establish a separate nonattainment area. The principal distinction between the tribal process and the non-tribal process is the increased weight given to the tribal boundaries out of recognition of and respect for tribal sovereignty.

In its June 23, 2009 letter to Deborah Jordan, Pechanga requested that EPA create a separate nonattainment area for the Pechanga Reservation or, alternatively, move the northern boundary of the San Diego Nonattainment Area westward to include the Pechanga Reservation. Pechanga's request was supported by an attachment to its letter that addressed the nine<sup>7</sup> factors suggested in EPA guidance for establishing or changing nonattainment area boundaries.

In EPA's evaluation of the (now consolidated) five factors affecting nonattainment boundaries, the first three factors do not weigh in favor of either grouping or not grouping Pechanga with San Diego County; the fourth factor (Geography/Topography) supports including Pechanga with San Diego County; while the fifth factor (Jurisdictional Boundaries) supports not grouping them but honoring the tribal request for a separate designation.

If the jurisdictional boundary criterion is given its proper weight and the sovereignty of the Tribe is given due deference, EPA's multi-factor analysis, and EPA's policy for implementing the 8-hour ozone standard in Indian Country, support Pechanga's preferred approach of designation of the Pechanga Indian Reservation as a separate nonattainment area.

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<sup>5</sup> TSD, Technical Analysis for San Diego County, p. 13 of 14.

<sup>6</sup> Page, *Policy for Establishing Separate Air Quality Designations for Areas of Indian Country*, December 20, 2011.

<sup>7</sup> The nine factors have been subsequently condensed to the five factors currently in use.

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The Tribe appreciates the fact that EPA determined that it was not appropriate to group Pechanga's tribal lands with South Coast. However, the Tribe respectfully requests that EPA fully consider and support the Tribe's request for creation of a separate nonattainment area for the Pechanga Indian Reservation. We specifically request that the analysis in the TSD be expanded to compare the case for a separate nonattainment area with the case for including Pechanga in the San Diego Nonattainment Area. We are especially interested in understanding EPA's assessment of the degree that each factor supports one case over the other, and the relative weight that EPA assigns to each factor in this situation.

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 Syndi Smallwood, Environmental Director, at (951) 770-6150. Questions or issues of a legal nature should be directed to Jim Cohen, Deputy General Counsel, at (951) 770-6176. Questions or issues of a technical nature should be directed to Gary Rubenstein at Sierra Research, at (916) 444-6666.

Sincerely,



Mark Macarro  
Chairman