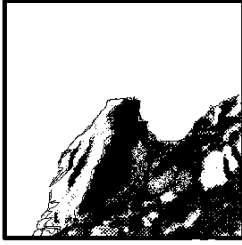


US EPA ARCHIVE DOCUMENT



# Ewiiapaayp Tribal Office

## Ewiiapaayp Band of Kumeyaay Indians

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April 4, 2012

Jared Blumenfeld, Regional Administrator  
Environmental Protection Agency  
United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, California 94105 -3901

Cc: Amy Zimpfer, Associate Director - Air Division

Re: Recommendation for a Designation of the Ewiiapaayp Indian Reservation for the 8-Hour Ozone National Ambient Air Quality Standard

Dear Mr. Blumenfeld:

Thank you for the opportunity to submit a recommendation for the designation of the Ewiiapaayp Indian Reservation that is under the jurisdiction of the Ewiiapaayp Band of Kumeyaay Indians (Ewiiapaayp Band) for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Ewiiapaayp Indian Reservation is divided between two non-contiguous sections that are separated by 19 miles. The East Ewiiapaayp section of the Reservation of 5,460.13-acres is perhaps the most remote Indian Reservation in California, and perhaps in the 48 contiguous United States, located in the mountains of rural east San Diego County just a few miles from the United States-Mexico border. Elevation of the Reservation is between 4,800 and 6,300 feet. The Reservation is at the end of a single, one-lane, dirt road of twelve miles rising over 1,800 feet with sharp curves, and steep drop-offs. This is a true rural area, with few neighbors, infrequent vehicle trips, no major emissions sources, and few minor emissions sources. The West Ewiiapaayp section of the Reservation of 10.02-acres is located in the unincorporated community of Alpine in east San Diego County. Alpine is a rural community of approximately 15,000 residents. The Ewiiapaayp Indian Reservation is administered by a sovereign, self-governing tribal government within discrete jurisdictional boundaries that separate the Reservation from other governmental jurisdictions of the county, state and federal government.

The tribal lands of the East Ewiiapaayp section of the Reservation are pristine, without the impacts of commercial development and but 10 residences on its 5,460.13-acres. The Tribal

citizens live seasonally on the Reservation due to a severe seasonal climate, the complete lack of infrastructure, and inadequate and hazardous roads that are impassable during frequent seasonal storms. The Ewiiapaayp Band has successfully protected its air quality on the Ewiiapaayp Indian Reservation, and should not be penalized for emissions originating in other governmental jurisdictions.

The Ewiiapaayp Band recommends that the area within the external boundaries of the Reservation remain designated "Attainment" for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). To our knowledge, the Ewiiapaayp Reservation has been always been designated Attainment for the 8-hour ozone NAAQS, and no factors have changed affecting ozone formation, or ozone pre-cursor formation on the Reservation or in areas near the Reservation.

The Ewiiapaayp Indian Reservation was recognized by the EPA as excluded from the San Diego nonattainment during the 2004 designations of the 1997 standard ozone standard through March 30, 2012 according to U.S. EPA's website: "8-Hour Ozone Nonattainment Areas, Detailed Description of Certain Area Boundaries for Partial Counties As of August 30, 2011."<sup>1</sup>

The EPA preliminary conclusion to designate the Indian Country of the Ewiiapaayp Band as nonattainment for the revised 2008 NAAQS because the [San Diego County] area violates the 2008 ozone NAAQS is in error and should be withdrawn. The Ewiiapaayp Indian Reservation should either remain excluded from the San Diego nonattainment area or be designated as not a nonattainment area within the exterior boundaries of the Reservation.

The Clean Air Act requires EPA to designate any area as nonattainment if it violates a NAAQS or if it contributes to a violation in a nearby area. No air quality data (Factor 1) for the Reservation show a violation or contribute to a violation in a nearby area. The available conclusion is inescapable that if air quality monitors were on the Reservation the data would support the Tribes conclusion.

Emissions and emission-related data (Factor 2) for stationary sources and population centers and traffic patterns are not available because there are no stationary sources and a population of but 10 residing seasonally on the Reservation, making designation for a nonattainment area unavailable.

Meteorology and weather or transport patterns (Factor 3), influenced by geography and topography (Factor 4), do not show the formation of ozone from local sources or transport. The weather on the Reservation is characterized by high wind speeds defined as a class 7 (average wind speeds in excess of 8 to 15 meters per second varying by season and time of day), which are accelerated by steep ridgelines and narrow valleys. The 10 tribal citizen home sites are seasonally occupied, and average daily trips of vehicle traffic is less than a handful per day.

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<sup>1</sup> <http://www.epa.gov/oaqps001/greenbk/gnp.html>

The jurisdictional boundaries (Factor 5) associated with the County and the State are inappropriate for the Reservation and its tribal government. The EPA has not consulted with the Tribe concerning jurisdiction boundary alternatives appropriate for the Tribe.

Absent new data to the contrary, the Ewiiapaayp Indian Reservation should remain designated Attainment for the 8-hour Ozone standard as any change from Attainment designation must be accompanied by new data indicating that the area designated is not in compliance with the NAAQS. The Ewiiapaayp Band is confident any data collected on the Reservation will prove the tribal lands should be designated for attainment.

The Ewiiapaayp Band also considered the following factors in making this recommendation for air quality designation for the Ewiiapaayp Indian Reservation:

- Air Quality Data. The Ewiiapaayp Indian Reservation currently does not have an air quality monitor for ozone. The nearest air quality monitor for ozone is on the nearby La Posta Indian Reservation that shows the area is attaining air quality standards for the new 2008 8-hour ozone standard. This monitor is the nearest air quality monitor in the area with technical information available. That technical information indicates compliance with the 2008 ozone standard. The nearest monitor in the area that meets EPA regulatory monitoring criteria is in Alpine, California, approximately 19 miles away, and approximately 3,000 to 4,000 feet lower elevation at 2,000 feet above sea level. Data from this source is not representative of air quality on the Ewiiapaayp Indian Reservation and cannot be used to assess regulatory levels on the Reservation and is not representative of air quality on the Ewiiapaayp Indian Reservation.
- Emissions related data. There are little or no emissions data on the Reservation. The nearby Campo Band of Mission Indians performed an Emissions Inventory in 2006 and found no major emissions sources within 65 miles of the Campo Indian Reservation, which is less than 5 miles from the Ewiiapaayp Indian Reservation, and no minor sources within 25 miles. The Campo Indian Reservation is more than 35 miles from the nearest measurable emissions sources in the area.
- Traffic and commuting patterns. There is no major arterial road through the Ewiiapaayp Indian Reservation. Traffic volume is solely tribal citizen vehicle trips from the 5 tribal citizens and other family (10 total). Vehicle traffic is low and estimated at approximately 2 vehicles per day. There is no commuter traffic, no local traffic to stores and restaurants, of which there are none in the area.
- Population Density and degree of urbanization. The area is extremely rural, with no urbanization. Population density is estimated at 1 person per square mile (urban fringe is recognized as a density over 1,000 times this density). No industrial and no commercial development occur on or near the Reservation, with no local Title V emissions sources.
- Meteorology. The prevailing winds on the Reservation are 35 to 50 mph from the west, southwest 60 % of the time, which keep the area clear of ozone pre-cursors.
- Geography/Topography. The nearest sources of ozone pre-cursors is Alpine, approximately 19 miles away, and approximately 3,000 to 4,000 feet lower elevation at 2,000 feet above sea level, and is not representative of air quality on the Ewiiapaayp Indian Reservation. Alpine is on a ridge line 30 miles east of San Diego and is presumed to be in a zone where ozone pre-cursors and an ozone mixing zone creates significant ozone levels. Alpine is considered by environmental professionals and agencies in San Diego County to have the highest

ozone levels in Eastern San Diego County. Due to the terrain and geography in the area, technical experts presume that ozone levels peak at Alpine and then drop off dramatically east of Alpine. Absent monitoring data to indicate otherwise, ozone levels in rural eastern San Diego County are presumed to be meeting the 2008 ozone standards.

- The existing jurisdictional boundaries. The external boundaries of the Ewiiapaayp Indian Reservation separates Indian Reservation land from private, state and federal lands in San Diego County. The Ewiiapaayp Tribal Government has jurisdiction over air quality on the Ewiiapaayp Indian Reservation, while the State of California has jurisdiction over state and private lands outside of the Reservation, while federal agencies have jurisdiction over federal public lands outside of the Ewiiapaayp Indian Reservation. There is no metropolitan planning area that has jurisdiction over the Ewiiapaayp Indian Reservation.

The EPA letter to the Tribe dated December 9, 2011 that required an expression of interest by the Tribe for tribal consultation by December 23, 2011, a mere 14 days not including the delivery time for the letter, resulted in receipt and consideration of the letter and its notice after the deadline. This is not tribal consultation as defined in the EPA Policy on Consultation and Coordination with Indian Tribes dated May 4, 2011. The EPA policy states tribal “consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.” [EPA Policy, Article I; 1] This process is required by Executive Order 13175 that requires the EPA “have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” [EPA Policy, Article II; 2] The EPA policy says “consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration.” [EPA Policy, Article V.C.; 7] The EPA process for the nonattainment designation fails to satisfy any one of the EPA Tribal Consultation Policy criteria.

In addition, according to Executive Order 13175 as well as EPA's Policy Directive on consultation with tribes dated December 20, 2011, for establishing air quality designations for tribes, any change in air quality designation requires, among other steps, government-to-government consultation with the tribes. Such tribal consultation has not occurred.

Thank you in advance for considering our recommendation. We look forward to a government-to-government tribal consultation with the EPA that would result in an outcome that continues recognition of the Attainment status for the Ewiiapaayp Indian Reservation for the 8-hour zone NAAQS.

Please contact the Tribe's CEO, Mr. Will Micklin, by telephone at (619) 368-4382 or by email at [wmicklin@leaningrock.net](mailto:wmicklin@leaningrock.net).

Sincerely,



Robert Pinto, Sr.  
Tribal Chairman

Ewiiapaayp Band of Kumeyaay Indians