

US EPA ARCHIVE DOCUMENT

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February 27, 2012

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

Re: Preliminary Decision on Air Quality Designations for the Revised 2008 Eight-Hour
Ozone National Ambient Air Quality Standards

Dear Mr. Blumenfeld:

We write to you today on behalf of the Morongo Band of Mission Indians ("Tribe") in response to your letter to Tribal Chairman Martin dated December 9, 2011, announcing EPA's preliminary decision to designate Morongo Indian country areas ("Reservation") "as nonattainment along with the Los Angeles-South Coast surrounding state area." Your letter drew the Tribe's attention to the Technical Support Document for "details regarding our preliminary decision." Technical Support Document for 2008 Ozone NAAQS Designations; California Area Designations for the 2008 Ozone National Ambient Air Quality Standards, Technical Analysis for Los Angeles-South Coast Air Basin, 13-15 (December 9, 2011) ("TSD"). We respectfully request that you address the apparent conflict between your letter, the TSD, and EPA policy by clarifying that EPA will continue to address the Morongo Reservation on its own terms, as a jurisdiction separate from the Los Angeles-South Coast ("South Coast") state area.

As you are well aware, EPA failed even to acknowledge the existence of the Tribe, much less consult with it as required by federal law and policy, when it moved the Reservation from the Southeast Desert Air Basin to South Coast in 2003. 68 Fed. Reg. 57820 (2003) ("Boundary Rule"). In the last three years, EPA has made significant progress toward consistently consulting with the Tribe on a government-to-government basis concerning air quality matters. Among other things, you committed to meaningful discussions of reversing the Boundary Rule and to

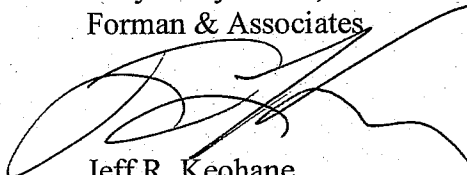
Tribe in its May 2009 boundary change petition. In the TSD, EPA relies on general information about South Coast rather than specific information about, among other things, emissions, meteorology, commuting patterns, and geography specifically related to the Reservation. TSD at 14. Contributing to the sense that EPA did not seriously consider the Tribe's petition is the fact that the TSD repeatedly referred to the Tribe by the wrong name and found that the generally undeveloped Reservation was "integrated" with nonexistent "surrounding" urban areas. *Id.*

EPA even ignored its own policy requiring that "the jurisdictional boundaries factor should be considered differently for a tribe than it is considered for a state or county." Policy for Establishing Separate Air Quality Designations for Areas of Indian Country, 6 (December 20, 2011). Instead of following its own policy, EPA relied almost exclusively on the fact that the monitor on the Reservation and the monitor at the Banning Airport have similar design values. *Id.* In considering whether to establish the Reservation as its own nonattainment area, however, the relevant consideration is whether the design value of the monitor on the Reservation is similar to the design value for the monitor that will establish the classification of the South Coast area. TSD at 14; TSD Appendix 3. If EPA ignores relevant information provided by the Tribe and relies instead upon irrelevant information, its final decision will be legally indefensible.

Pursuant to its consultation policy, EPA must consult with the Tribe to clarify its position. In addition to addressing the apparent inconsistency between EPA policy and the preliminary decision embodied in the TSD, those consultations should address the results of the public comment period, recently extended to February 3, 2012, 77 Fed. Reg. 2677 (2012), and the recently published policy concerning attainment date requests, including the one submitted by the South Coast Air Quality Management District. 77 Fed. Reg. 8197 (2012).

Please do not hesitate to contact us or the Tribe's environmental director, Liz Bogdanski, if you have any questions or we may be of any assistance in facilitating government-to-government consultation with the Tribe.

Very Truly Yours,
Forman & Associates



Jeff R. Keohane

Cc: Chairman Martin