GILA RIVER INDIAN COMMUNITY
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September 2, 1999

Felicia Marcus
Regional Administrator
U.S. ENVIRONMENTAL PROTECTION
AGENCY - REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: GILA RIVER INDIAN COMMUNITY'S RECOMMENDED AREA DESIGNATIONS FOR THE REVISED OZONE AND PARTICULATE MATTER NAAQS

Dear Ms. Marcus,

As you are aware, Section 107(d) of the Clean Air Act ("CAA" or the "Act") establishes procedures for assigning area designations when National Ambient Air Quality Standards ("NAAQS") are revised. On June 18, 1997, the U.S. Environmental Protection Agency ("EPA") adopted a new 8-hour standard for ozone, a new 24-hour and annual NAAQS for $PM_{2.5}$ and a revised method for determining compliance with the 24-hour and annual PM_{10} NAAQS. Section 107(d)(1)(B) of the Act, as modified by the Transportation Equity Act of the 21st Century, gives state governors until July 1999 to recommend to EPA those areas under their jurisdiction that attain, do not attain or cannot be classified as attaining the revised ozone and PM_{10} NAAQS. Under Section 301(d) of the Act, EPA "is authorized to treat Indian tribes in the same manner as states under this Act." EPA, by its adoption of 40 C.F.R. § 49.3, declared that "[T]ribes meeting the eligibility criteria of Sec. 49.6 shall be treated in the same manner as states with respect to all provisions of the CAA and implementing regulations, . . ." EPA explicitly recognized the authority of an "eligible" tribe to make the same recommendations regarding the attainment status over lands which it has jurisdiction in its August 14, 1998 "Proposed Implementation Guidance for the Revised Ozone and Particulate Matter NAAQS." On March 31,1999, you determined that the Gila River Indian Community ("GRIC" or the "Community") was eligible to implement Clean Air Act programs under the above cited authorities (the so-called "Treatment as a state" status). In reliance on the foregoing and on behalf of the members of the Community, I recommend that all areas within the exterior boundaries of GRIC lands be designated as "unclassifiable" for the revised ozone and PM_{10} NAAQS.

I. BACKGROUND.

The Community is located on approximately 374,000 acres in south central Arizona. It has an on-reservation population of approximately 12,000 people , making it the fourth most populous reservation in the United States. The GRIC is primarily composed of peoples from the Akimel

O'odham (Pima) and Pee Posh (Maricopa) Tribes. The reservation was established in 1859 by Executive Order with Congressional approval.

The Community lies directly south of and adjacent to the border of the Phoenix metropolitan area, the fastest growing metropolitan area in the country. However, the Community itself is entirely rural and primarily agrarian. It contains no significant urban areas and has 32,196 acres in agricultural production with plans to develop an additional 100,000 acres over the next 20 years. Although the Community has three industrial parks containing 50 plants and other facilities, only two of these facilities are major air pollution sources. By far the largest category of air pollution sources within the Community is vehicular. Interstate 10 bisects the eastern third of the Community diagonally, from north to south, and is the main transportation corridor between Phoenix and Tucson, the two major metropolitan areas of Arizona. The interstate is the largest single source of emissions, with 781,671 vehicle miles traveled daily. There are also considerable miles traveled on State and Maricopa County roads that traverse the reservation. In addition, the Community has approximately 160 miles of unpaved roads that are very rarely traveled and that consist mainly of farm roads and roads accessing very remote areas.

For a number of years, the Community has recognized the critical role of environmental protection programs in protecting the health of our Community members, preserving our environment, managing the nature and scope of economic development and generally allowing our people to exercise their rights of self determination as an Indian nation. As a result, we have developed what we believe is an effective environmental protection program. Upon EPA's adoption of its Tribal Authority Rule in February of last year, the Community concluded that the next step in the continued development of our environmental programs was the preparation of a Tribal Implementation Plan ("TIP"). We are currently involved in a two-year process which is intended to result in the adoption of a TIP by January 2001. The support and encouragement of your agency has been a critical and very welcome factor in our TIP development efforts. The Community views these area designation recommendations as a key component in TIP development. In past years, we did not have a role in attainment area designations, even though the designations impact the public health, environmental protection and economic decisions that directly affect us. This unfortunate situation and its consequent loss of our ability to control our environment has been largely corrected by Congress' enactment of Section 301(d) of the Act and your agency's adoption of the Tribal Authority Rule.

II. REASONS FOR THIS RECOMMENDATION.

There are four reasons that the Community recommends that the EPA Administrator designate GRIC lands as unclassifiable for the revised ozone and PM_{10} NAAQS:

A. There Is No Reasonable Basis To Conclude That There Are Current Violations Of Either The Revised PM_{10} Or Ozone NAAQS On GRIC Lands.

This statement is supported by the simple fact that there have been no measured or modeled violations of any ozone or particulate matter NAAQS on GRIC lands. We recognize that there have not been ambient monitors of any kind sited on GRIC lands so there could be no measured violations. Also, the air quality modeling conducted by the Arizona Department of Environmental

Quality ("ADEQ") and the Maricopa Association of Governments ("MAG") for the Maricopa County ozone and particulate nonattainment areas did not typically include GRIC lands within the modeled domain. Nevertheless, the fact remains that there have been no actual or predicted violations of any ozone or particulate standard on GRIC lands. Perhaps more importantly, a review of the data indicates that it is unlikely that there would be a violation of either revised NAAQS if there had been monitoring or if modeling had been performed.

As to ozone, both the monitoring and modeling conducted by ADEQ and MAG show that elevated concentrations of ozone tend to be measured and predicted on the eastern and northeastern boundaries of the Salt River basin, that is, well away from the northern boundary of GRIC lands.[1] This phenomenon is consistent with the predominant summer air flow in the basin, which is typically from south and southwest to east and northeast. In addition, the South and Estrella Mountains, which are located on the boundary between GRIC and Phoenix, act as a physical barrier between the airsheds.

ADEQ and Maricopa County studies have concluded that elevated particulate concentrations, particularly for the 24-hour PM_{10} NAAQS, tend to be associated either with regional high wind conditions or localized activities. However, the nature of the sources of particulate emissions on GRIC lands are unlikely to create significantly elevated particulate concentrations under either of the conditions cited by the state and county studies. The few miles of unpaved roads are only sparsely traveled; there is little ongoing road construction of any significance; vehicle miles traveled on paved roads are a tiny percentage of those in the surrounding counties; and there are few stationary sources of the kind that emit significant particulate matter, specifically particulates of 10 microns or less in size (see generally "Attachment 1", the GRIC Emissions Inventory). As was noted earlier, there are substantial areas of Community lands that are in agricultural use. However, most of these areas are in the southern half of GRIC lands, *i.e.*, away from the Maricopa County particulate nonattainment area. In any case, total annual PM_{10} emissions from agricultural tillage are calculated to be only 448 tons spread over 32,000 acres. In addition, approximately 25 percent of the currently cultivated acreage is planted in alfalfa which makes for a good cover crop reducing particulate emissions during high wind situations.

In sum, the lack of actual measured data, modeled data or indicative conditions all support the conclusion that current violations of the revised ozone and PM_{10} are highly unlikely on GRIC lands.

B. There Is No Reasonable Basis To Conclude That Air Pollution Sources On GRIC Land Cause or Significantly Contribute To Violations Of The Revised Ozone And PM_{10} NAAQS On Adjacent Lands.

For this conclusion, we rely upon the 1997 Emissions Inventory that is attached to this letter as Attachment 1. The emissions inventory confirms our characterization of the Community as rural

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[1] There have also been elevated concentrations of ozone measured on the extreme western boundary of the basin, apparently the result of either an unusual shift in wind conditions or transport.

with a mix, number, size and location of sources that would not be expected to make any significant contribution to the violations of the ozone and PM_{10} NAAQS measured in the Maricopa County nonattainment areas. As we have noted, the single greatest source of volatile organic compound and second greatest source of particulate emissions are vehicles traveling **through** the Community on interstate, state or county roads over which the Community exercises little or no control. Even these emissions, however, when distributed over the reservation and when considered with the lack of any contribution from other on-road mobile sources, such as local traffic from residential neighborhoods, urban traffic of any kind, etc., is not sufficient to create the conditions that would constitute a significant addition to concentrations of ozone and PM_{10} that have been measured or modeled in Maricopa County.

C. Designating Community Lands As Unclassifiable For The Revised Ozone And PM_{10} NAAQS, While Implementing The Three-Year Ambient Air Quality Monitoring Program We Have Proposed, Will Ensure That The Attainment Designation Is Based Upon The Most Accurate And Reliable Available Data — Actual Monitored Data.

The CAA defines an "unclassifiable area" as "any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant," CAA Section 107(d)(1)(A)(iii). In view of this definition, we had given strong consideration to recommending that you designate GRIC lands as "attainment" for both revised NAAQS. For the reasons we have noted in Sections II.A and II.B, the "available information" suggests that neither standard is being violated on the Community lands. There were two reasons, however, that we decided not to make such a recommendation.

First, while the available information does support an attainment designation, none of it is based on actual measurements of ambient air quality. Before making a decision as critical to air quality protection as the attainment status of our lands, we feel our members deserve to know exactly the quality of the air they breathe, based on scientific data not solely on a series of indicative factors.

Second, the Monitoring Network Development Project proposal (the "Project") we have enclosed as "Attachment 2" will provide exactly the kind of scientifically defensible mechanism for determining the attainment status of an unclassifiable area that is envisioned by the CAA. The design of the Project was developed with extensive input from air quality monitoring personnel at EPA Region 9 and ADEQ who were supportive and helpful. Although the monitoring network described in the Project document will continue to operate indefinitely, we intend that the Project will have a three-year term, a term that coincides with the attainment demonstration period defined in EPA rules, 40 C.F.R. § 50.9. A three-year monitoring program is not only consistent with EPA rules but takes into account the uncertain status of the revised ozone and PM_{10} NAAQS after the American Trucking decision,[2] the fact that tribes are not subject to the same CAA deadlines as states

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[2] The American Trucking decision, while a source of understandable frustration at your agency, provides us with a period during which we can develop accurate information to respond to the revised NAAQS whenever and however they are eventually finalized.

[40 C.F.R. § 49.4(a)], and the fact that the monitoring program period is consistent with your agency's area designation process for the new $PM_{2.5}$ NAAQS.

D. Designating GRIC Lands As Unclassifiable For The Revised Ozone And PM_{10} NAAQS Will Significantly Assist The Community In Its Development Of A TIP.

Obtaining an unclassifiable designation is of great practical significance to GRIC in its efforts to develop a TIP. The nonattainment area plan requirements of Section 110 and Part D of the CAA are incredibly complex and resource intensive. The TIP flexibility provisions of the Tribal Authority Rule, specifically 40 C.F.R. §§ 49.5 and 49.7(c), are of great potential assistance in reducing the nonattainment area plan burdens. However, section 49.5 requires a showing that, as to a particular provision, "it would be inappropriate to treat tribes in general in the same manner as states." Although it may it may be possible that EPA would be able to make such an universal finding as to all nonattainment area plan requirements, it is not certain. Similarly, it is impossible to predict in advance whether EPA could conclude that all nonattainment area plan requirements "are reasonably severable" from a TIP and "not integrally related to program elements that are not included in the plan submittal, . . ." as required by 40 C.F.R. § 49.7(c).

In effect, unclassifiable status gives the Community three years' breathing room (please excuse the expression) while it develops a TIP meeting the requirements of Section 110 of the Act without the added complexities of the Part D nonattainment area plan requirements. It should be noted that the nature of the order of enactment of amendments to the CAA has given the states a State Implementation Plan development process two or three times longer than what GRIC will have with an unclassifiable determination.

The Gila River Indian Community looks forward to continuing what has been an extremely constructive and positive relationship with your agency in the development of our air quality protection program. We also intend to coordinate with adjacent jurisdictions that, with Community members, are important stakeholders in our TIP development process. For the reasons we have stated, we hope you will find these recommendations acceptable and will find GRIC lands to be unclassifiable for the revised NAAQS. If you have questions about any aspect of this letter, please call Pat Mariella, Ph.D., the Director of the GRIC Department of Environmental Quality, at 520-562-2234, x225.

Sincerely,

Mary V. Thomas 9-5-99

Mary V. Thomas
Governor

cc: Members, GRIC Council w/o attachments
Jane D. Hull, Governor, State of Arizona
David P. Howekamp, EPA
Doug McDaniel, EPA
Nancy Wrona, ADEQ

James Bourey, MAG
Don Gabrielson, Pinal County AQCD
Al Brown, MCESD
Patricia Mariella, GRIC w/o attachments

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

Donald R. Antone, Sr.
Governor

Richard P. Narcia
Lieutenant Governor

October 31, 2000

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

RE: Gila River Indian Community's Recommended Area Designation for the Revised 8-Hour Ozone NAAQS - Additional Support Documentation for Unclassifiable Recommendation

Dear Ms. Marcus,

Thank you for the opportunity to submit a recommendation for the areas under the Gila River Indian Community's jurisdiction for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Gila River Indian Community (the Community or GRIC) recommends that the area within the exterior boundaries of the reservation, for which the Community has Treatment As a State status under Section 105 of the Clean Air Act (CAA), be designated as **unclassifiable** for the 8-hour ozone standard. I have attached a resolution passed by the GRIC Council October 18, 2000 supporting this recommendation on behalf of the entire Community.

As you know, the Community previously submitted a letter to you on September 2, 1999 also recommending an unclassifiable designation (attached). At that time, EPA had not yet developed guidance for the current designation process. The September 2, 1999 recommendation from GRIC made several key points that we are explicating further in this letter. In addition, this letter responds specifically to the EPA Guidance from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS), dated July 18, 2000. The Guidance states that metropolitan statistical areas (MSA's) with monitors that show violations will be presumed to be non-attainment but also lists 11 factors that will be considered by EPA in determining whether areas located within a nonattainment MSA should be excluded from the nonattainment designation. Although this letter reiterates some of the key points of our previous submittal, both the GRIC letter of September 2 and this letter need to be reviewed jointly to have a full understanding of the Community's position and its justification.

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GRIC's Commitment to Protecting Human Health and the Environment as well as to Sustainable Development

In a number of our discussions with EPA representatives on ozone designation, staff have pointed out that the ultimate goal of the designation process is to protect human health and the environment. GRIC is also highly committed to protecting human health and the environment and strongly supports EPA and the Clean Air Act's goals of improving air quality throughout the U.S., including Indian Country.

In 1995, as part of this commitment, the Gila River Indian Community pulled together several existing programs, including water quality, pesticides and solid waste into a newly established Department of Environmental Quality (DEQ). The GRIC pesticide regulatory program is the oldest tribal pesticide program in the U.S. having been established in the 1970's. Since 1995, the DEQ programs have expanded to include chemical emergency planning (EPCRA), hazardous waste, air quality as well as outreach, environmental education and planning. The US EPA has been extremely supportive through funding, technical assistance and policy decisions in the development of these programs. The Community has also committed its general revenue to the department; at this time, approximately half of the DEQ funding comes from EPA and half from the Community. The Community's success in environmental protection could not be possible without its partnership with EPA. We value this partnership and look forward to its continuation into the future.

The Best Management Practices Workgroup is one, specific example of GRIC's commitment to environmental protection and the positive results of that commitment. Five years ago, largely because of local Community concerns over the aerial application of agricultural pesticides, the DEQ convened a Best Management Practices workgroup of the growers at GRIC. Since that time, GRIC growers have significantly reduced the amount of pesticides applied as well as the toxicity of the pesticides. In addition, the growers use best management practices for cultivation to reduce dust.

The members of the Gila River Indian Community are Akimel O'odham (Pima) and Pee Posh (Maricopa). Their ancestors have lived along the Gila River in central Arizona for over 2,000 years and intend to remain for perpetuity. The Community has strong, practical interests as well as cultural values that require protection of its resources for the long term. The Gila River Indian Community would not tolerate becoming a pollution haven. Instead, GRIC is implementing plans for sustainable economic growth. GRIC has been an extremely depressed economic area with unemployment rates over 40%. In the past six years, the Community has put together a sustainable development plan that has included two casinos on the northern boundary of the Community. As a result of the casinos and the multiplier effect from the revenue, unemployment within the Community has dropped to 16%. However, this figure is still five (5) times the unemployment rate of the Phoenix area (2.7%). GRIC does not distribute its casino revenues to individual members. It uses its casino revenues for Community development, including governmental services such as paving roads, collecting household trash, providing drinking water and managing wastewater as well as fire protection. GRIC has also made substantial

commitments to education and provides scholarships to over 600 members who are currently attending college (up from 75 college enrollees 10 years ago). GRIC leadership estimates that it will take over two decades of increased revenue to build the physical infrastructure and the human resources to bring the Community from an underdeveloped state to a sustainable economy. Furthermore, the Community cannot and does not intend to rely on gaming revenues for the indefinite future. As a consequence, the Community is committed to a diverse economy that includes some commercial and light industrial development within the three industrial parks, but focuses on agricultural development.

A major element of the Community's plan for economic growth is an expansion of the agricultural acreage at GRIC (Pima Maricopa Irrigation Project Environmental Impact Statement 1998). The diversion of Gila River water upstream of the Community from the late 1800's to the 1930's resulted in a dry riverbed through most of GRIC as well as the destruction of riparian habitat and the stable, agricultural economy of the GRIC members. Over 100 years of litigation and negotiation are resulting in the return of water resources to the Community. At this time, the Community is building a sizeable irrigation distribution system for Central Arizona Project water under a contract with the Bureau of Reclamation. The multi-million dollar investment in agricultural infrastructure demonstrates GRIC's desire to remain a largely rural, agricultural area with limited areas on the Community's borders designated for commercial and industrial development. The Community does not intend to build subdivisions for non-members and has long-standing policies preventing development of housing beyond the needs of its own members. With an on-reservation population of 13,558 people and a land base of 583 square miles, GRIC has an extremely low, rural population density of approximately 23 people per square mile (GRIC Office of Planning & Evaluation). Therefore, population growth at Gila River will be limited to natural growth of a small, dispersed population base.

EPA Guidance

The OAQPS Guidance of July 17, 2000 states that EPA will make designations based on certain criteria including, "any area located within a Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (C/MSA) where a violation of the NAAQS has been measured. However, see the list of 11 mitigating factors below." All of the Gila River Indian Community lies within Maricopa and Pinal Counties which are an MSA. Maricopa County has monitors that show violations of the one- hour standard for ozone. Currently, the Maricopa County acreage of GRIC (the northern 1/3 of the Community) is within the 1-hour ozone nonattainment area. However, in this letter, Gila River addresses the 11 mitigating factors, as well as other policy factors, to recommend that GRIC *not* be included in the Phoenix nonattainment area for the 8-hour standard. As GRIC stated in its previous letter of September 2, 1999, the original inclusion was based arbitrarily on the boundary of the Maricopa Association of Governments' Urban Planning Area boundaries, not on air quality data. Furthermore, the designation was imposed without consultation with GRIC. There is no monitored, modeled or any other data indicating that GRIC lands have ever exceeded the NAAQS or are likely to do so under current circumstances. On the contrary, detailed emissions inventory data, data from near-by monitors and information on the meteorology of ozone

transport in Maricopa County as well as geophysical facts (such as the presence of three mountain ranges on the borders of GRIC) are powerful indicators that GRIC does not exceed the NAAQS. In fact, because of the very small emissions of ozone precursors, oxides of nitrogen (NOx) and volatile organic compounds (VOC's) from both vehicles and stationary sources as well as the spatial distribution of these sources, GRIC does not contribute to the Phoenix ozone problem. In summary, GRIC is neither a source of ozone violations nor a receptor for ozone generated elsewhere. As there are currently no monitors at GRIC, it is GRIC's recommendation that EPA designate the Community as unclassifiable. However, as part of the development of a Tribal Implementation Plan under the Clean Air Act, the GRIC DEQ is developing three (3) monitoring stations that will begin to provide valid data within the next year. These monitors will confirm whether air at GRIC meets the 8-hour ozone NAAQS.

RESPONSE TO ELEVEN MITIGATING FACTORS

1. Emissions and Air Quality in Adjacent Areas (including adjacent C/MSA's)

The Gila River Indian Community is split between Pinal and Maricopa Counties (see attached map). Approximately one-third of the northern portion of GRIC lies within Maricopa County and has been designated a nonattainment area for the 1-hour standard. The Pinal County acreage of GRIC is currently designated as attainment. The Pinal County designation is based on monitoring data from the State of Arizona that indicates attainment with the NAAQS for ozone, limited industrial development and the relatively low population density. In contrast, the majority of Maricopa County (including the city of Phoenix) is currently designated as a serious nonattainment area for ozone (1-hour standard). GRIC research indicates that the Community was included in the Maricopa County nonattainment area in the 1970's without consultation or input from the Community. The boundaries were based entirely on the Maricopa Association of Governments' Urban Planning Area. This area included the northern portion of GRIC but at the same time did not include the western portion of Maricopa County despite the fact that the two were very similar in the 1970's. They both had low population densities and a rural, mostly desert or agricultural environment. GRIC remains today virtually the same as it was in the 1970's. In contrast, the metropolitan Phoenix area has experienced a population explosion along with an increase of industrial development. As a result of increases in vehicle miles traveled as well as the number and size of industrial facilities within the greater Phoenix area, air pollution has become a serious problem. The Maricopa County nonattainment area was based on monitored exceedances of the NAAQS. However, there have never been monitors within GRIC boundaries. GRIC air quality personnel have researched the locations of monitored exceedances of the 1-hour and 8-hour ozone NAAQS within Maricopa County and all ozone exceedances have occurred in northern and northeastern Maricopa County. Precursors of ozone generated by industrial facilities and vehicle emissions within the Phoenix area are transported to the northeast by prevailing winds, react with sunlight and heat causing exceedances of the ozone standards. Monitoring stations located near the northern boundary of GRIC have not shown exceedances since monitoring data has been available (see attached map of monitoring stations and AIRS monitoring data).

GRIC has only two major stationary sources of air pollution (a medical waste incinerator, which is Title V for emissions of hydrochloric acid, and an aluminum extrusion facility that is Title V for emissions of VOC's). The single largest source of vehicle miles traveled at GRIC is from Interstate 10 which bisects the Community. I-10 is the major transportation artery between Phoenix and Tucson and because it is an interstate highway, is largely outside the control of GRIC. However, despite being the single largest source of ozone precursor emissions at GRIC, I-10 is still a relatively small source of ozone. Furthermore, as a result of the low average incomes and associated low percentages of vehicle ownership as well as the fact that the overwhelming majority of Community members work within the Community, there are relatively few vehicle miles traveled at GRIC by GRIC residents.

2. Population density and degree of urbanization including commercial development (e.g., shows a significant difference from surrounding areas)

Maricopa County is home to more than 2,991,250 people (Department of Economic Security Population Statistics Unit 2000 data) with more than 256,929 people employed in industrial-related occupations. The Gila River Indian Community with an on-reservation population of 13,558 is a rural area and has a population density of approximately 23 people per square mile. GRIC currently has 37,000 acres in agricultural production and has plans to increase agricultural acreage to approximately 100,000 acres over the next 20 years. GRIC plans to remain predominately a rural, agricultural economy and does not expect that the Community's population will increase, except by natural growth, in the future. In contrast, the Phoenix metropolitan area has in-migration of over several hundred thousand people annually.

GRIC is adjacent to Phoenix, the seventh largest city in the U.S. The city of Chandler, the nation's fastest growing city under 100,000 population in the 1990 census in the U.S., also borders GRIC. Both of these urban areas are part of the rapidly growing, sun belt experiencing highly robust economies. Over 90% of agricultural land in Phoenix and Chandler have been converted to urban or suburban developments. Metropolitan Statistical Areas, according to OMB reports, are core areas containing a large population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. In other words, MSAs are generally urban cores and their suburbs. Indian communities are stark exceptions to the presumption of social and economic integration that may seem logical due to physical closeness. One of the most significant economic challenges for Indian Tribes, including those in Arizona, is the lack of economic integration with surrounding cities. In general, Tribes have had few ways to benefit from the growth of surrounding cities. Tribes do not receive revenue sharing from state or other local taxes. Because Tribes are not political subdivisions of the state, they generally provide their own governmental services with their own resources, including development and maintenance of roads. Tribes generally have few retail establishments. A number of reports over the past decade have demonstrated that the already limited amount of tribal dollars flow off of reservations because of the lack of retail stores on tribal land (and tribal members pay city and state retail taxes as a result). Only with the advent of the two casinos has there been some reverse in the tide of this 'trade deficit' at GRIC. Very few people commute from off of GRIC to work for the Community. Conversely, even fewer

people live at GRIC and work off the Community. Many Community members who work off the Community have moved into surrounding cities.

Most children at GRIC attend elementary and middle school at GRIC. However, due to limited options, most GRIC students attend high school off Community. As with many Indian Tribes, the drop out rate is high, due, in part, to the lack of social integration between GRIC and the surrounding cities and towns. The densely populated subdivision of Ahwatukee (part of Phoenix) borders the Community. Most of the homes in Ahwatukee were built after the 1980's and the average cost exceeds $150,000. In addition, there are few more graphic examples of the lack of economic and social integration between GRIC and Phoenix than the stark contrast between the homes of Ahwatukee and the Sonoran desert across the border at GRIC.

The Community has taken the opportunity for economic development by opening two casinos during the past 8 years. The casinos are the first area of fledgling economic integration by which the Community gains some economic benefits from the surrounding urban areas. For the first time, the Community has resources to provide basic governmental services and to begin development of much needed infrastructure such as paving of roads. In addition the Community has committed substantial resources to education providing scholarships to over 600 students attending college. However, the Community strategic goal is to use the current gaming revenues to build a sustainable economy. The Community is building a golf course and a resort on its northern border and is funding entrepreneurship programs to assist Community members in developing small businesses within the Community. Hospitality and retail businesses are the major economic developments planned at GRIC in addition to the expansion of agricultural lands over the next two decades.

It is important to point out that much of the initial economic success and the continued growth of the Phoenix area is due to the appropriation of the Tribe's water by non-Indian users throughout the last century. The Community has been in litigation and negotiations for a century in the effort to have this water returned to the Community. After the completion of Coolidge Dam in 1934 upstream of GRIC, the only time the Gila River has flowed throughout the length of the Community is during flood events when the gates of the dams are opened to prevent overtopping. The last event was in 1993. This upstream diversion of Gila River water devastated the agricultural economy of the Community. It seems pointedly unjust to now require the Community to take responsibility for the air quality consequences of the growth in Phoenix that was fueled, in part, by the taking of Gila River's water resources.

3. Monitoring data representing ozone concentrations in local areas and larger areas (i.e., urban or regional scale)

GRIC currently has no monitoring data for any of the criteria pollutants. However, monitored exceedances of the 1-hour and the 8-hour NAAQS for ozone have occurred in north and northeastern Maricopa County. This pattern can be attributed to prevailing winds transporting NOx and VOCs from vehicle emissions and industrial facilities in the Phoenix area to the

northeast (away from GRIC) resulting in the formation of high ozone concentrations at the monitoring sites located at Fountain Hills, Mount Ord and the Superstition Mountain Class One area, among others. The Pinal County monitor located in Apache Junction documented one exceedance of the 1-hour standard in 1993. This 1993 instance is the only exceedance of the ozone NAAQS from within Pinal County to date.

It is important to realize that Maricopa and Pinal County, like many counties in the west, are very large; together they total 14,592 square miles. Consequently, the MSA that includes both counties is larger than a number of states. Treating these huge expanses of land as uniform, urban areas is not meaningful for air quality management.

Monitoring Stations are being established at GRIC

GRIC is in the process of establishing three (3) monitoring stations, based on EPA protocols. GRIC air quality staff have consulted extensively with EPA Region 9 and Arizona DEQ monitoring experts in selection of the sites. Two of the stations will include monitors for ozone and particulates and all three will collect meteorological data. One of the sites is in the current nonattainment area, near the boundary with Phoenix. GRIC DEQ is also developing a Quality Assurance Program Plan and intends to submit it to EPA Region 9 for approval by the end of this year. Following approval of the QAPP, the DEQ will begin collecting valid data for inclusion in the AIRS database. This data will be used to determine whether the ambient air at GRIC violates the NAAQS for ozone. Given that the precursors to ozone generated in the Phoenix area have been demonstrated to move north and east, away from GRIC, it is highly unlikely that any GRIC monitors will show violations of the 8-hour standard.

4. Location of emissions sources

Emissions sources of precursors to ozone from within all of GRIC total 1038 tons of VOCs and 1901 tons of NOx based on the most recent GRIC emissions inventory (1997). In the current GRIC non-attainment area, there are 250 tons of VOC's emissions and 490 tons of NOx per year (1997 Emissions Inventory). Emissions of VOC's from the GRIC non-attainment area are less than .002% of VOC emissions from the Phoenix non-attainment area. Emissions of NOx from the GRIC non-attainment area are less than .006% of the NOx emissions from the Phoenix non-attainment area. Moreover, the sources are widely distributed throughout GRIC lands. These facts demonstrate that emissions of precursors to ozone from all sources within GRIC are extremely unlikely to have a measurable impact on the nonattainment area. In addition, total emissions of precursors of ozone from within GRIC do not, nor are they expected to, contribute in the future to monitored exceedances of ozone within the Maricopa County nonattainment area.

5. Traffic and commuting patterns

The Gila River Indian Community is bisected by Interstate 10 which is the single largest contributor of precursors to ozone in the Community. Approximately 45,000 vehicles travel daily between Phoenix and Tucson on I-10, very few of which are from GRIC. Approximately 25 miles of I-10 run through GRIC, two lanes in each direction. As noted previously, because of I-10's status as an interstate highway, GRIC has effectively no jurisdiction over it. The second

most highly traveled corridor at GRIC is Riggs Road which stretches east and west across the Community for approximately 18 miles. Riggs Road consists of one lane in each direction with approximately 9,000 vehicles daily. Several county, tribal and BIA maintained roads account for the remaining arteries for vehicle traffic through GRIC. Vehicle ownership at GRIC is low with less than three thousand vehicles owned by residents. In contrast, there are several million vehicles owned by people who live, work and commute within the greater Phoenix area. Commuting patterns within GRIC are virtually non existent. Tribal government employs approximately 1,200 people who work throughout the Community. In many cases, Community members work and live in the same district (there are seven districts at GRIC). The second largest employer at GRIC is the Casinos, one located at the west end of GRIC and the other just off of I-10 near Phoenix. Of the approximately 1,000 casino employees, 80% are Community members who tend to live near the Casinos. The other part of the Casino work force is drawn from the nearby urban areas. To encourage customers to visit, the Casino runs buses from the near-by urban areas on a regular basis. This bus service reduces the single occupancy vehicle traffic to the Casinos.

6. Expected growth (including extent, pattern and rate of growth)

The population at GRIC is not expected to increase beyond natural growth within this century. There is very little in-migration, limited to Community members who may have moved off Community usually to attend school or for work. Less than one quarter of Community members (approximately 3,500 people) live off the Community at this time. The highest population centers within the Community are St. Johns and Sacaton (the governmental center) which have a few thousand people each. There is no identifiable growth pattern of homes at GRIC; most homes are located on family land areas (allotments) and, as is the case in most rural areas, are surrounded by considerable land, often an acre or more. In comparison, the greater Phoenix area houses almost three million people and expects growth through in-migration to continue to increase substantially over the next decade. According to the census, population growth in Maricopa County between 1990 and 2000 was approximately 35%.

7. Meteorology (weather/ transport patterns)

Summer meteorological patterns in Maricopa County are important reasons why air quality is likely to have remained well below the NAAQS for ozone within GRIC. During the summer months, the natural wind patterns in the Phoenix valley are from the west toward the northeast causing air pollutants from Phoenix to be transported away from GRIC. Precursors of ozone are generated in the Phoenix area, react with sunlight and heat, and are transported to the areas surrounding monitoring stations in north east Maricopa County and beyond. There have been no monitored exceedances of the1-hour or the 8-hour NAAQS at monitoring stations within 20 miles of the Gila River Indian Community. None of the monitoring stations surrounding GRIC have documented an exceedance of the1-hour nor the 8-hour NAAQS for ozone. Please refer to the attached copy of the Maricopa county 1998 Ambient Air Monitoring Network Review dated June 30, 1999.

8. Geography/topography (e.g., mountain ranges or other air basin ranges)

The Gila River Indian Community has several geographic and topographic features preventing air pollution emissions from the greater Phoenix area from impacting the Community. The Estrella Mountain Range (4512 feet) runs north and south along the entire distance of the Community on the western edge. In addition, the South Mountain Range (2690 feet) runs along the northern portion of the Community separating Phoenix and Tempe from GRIC (see attached map of GRIC). A segment of the northern border of GRIC (adjacent to Chandler) does not have topographical barriers to air pollution transport. However, air pollution generated in Chandler does not impact GRIC due to the prevailing winds flowing to the north east, away from the Community. Along the north eastern portion of the Community the Santan Mountains (2163 feet) separate GRIC from Gilbert and Apache Junction. These natural barriers are large enough and have sufficient altitude to prevent pollution from transporting onto GRIC even during periods of inversions and stagnant air.

9. Jurisdictional boundaries

The Gila River Indian Community based its September 2, 1999 designation recommendation of unclassifiable for the revised 8-hour ozone standard on meteorological data, monitoring data and limited modeling information conducted by neighboring jurisdictions along with the 1997 GRIC emissions inventory. This GRIC designation recommendation also uses the same boundaries established through the process of receiving an eligibility determination for implementing Clean Air Act programs (the so-called Treatment as a State status) in accordance with the Tribal Authority Rule and the CAA; the Gila River Indian Community applied for and received authority from EPA in April of 1999 to implement Clean Air Act programs over lands within the exterior boundaries of the Reservation. In obtaining Treatment as a State status, EPA provided an opportunity, as required by the Tribal Authority Rule, for affected jurisdictions to comment on the jurisdictional claim. The current designation under the 1-hour standard splits the Maricopa and Pinal portions of GRIC and was based on an old urban planning area that may have had some meaning for regional planning purposes but had no correlation to air quality. In addition, the Community did not participate in the designation process, although the designation directly impacted public health, environmental management and economic decision-making.

Furthermore, the State Implementation Plan does not apply at GRIC. Because GRIC is still in the process of developing a Tribal Implementation Plan (TIP), and could not have developed one until the TAR was finalized in 1998, facilities at GRIC have not been able to accept permit limitations which would have allowed them to limit their potential to emit and thereby avoid being major sources. However, across the border, in the Phoenix serious nonattainment area, many sources have, under the provisions of the SIP, been able to avoid the costs of New Source Review by accepting permit limitations that allow them to use actual emissions rather than potential emissions which substantially changes whether they are considered minor or major sources. It is our understanding that, despite the exponential growth of industry in Phoenix over the last 10 years, Maricopa County Environmental Services has not issued a New Source Review (NSR) preconstruction permit to a major source in the nonattainment area because of the synthetic minor provisions provided under the SIP. In contrast, because GRIC, like all Tribes, did not have the authority to develop TIP's and associated synthetic minor programs, all facilities

at GRIC have had to use potential emissions (rather than actual) as the basis for their Title V determinations. Consequently, of the two major sources at GRIC, one would actually be a minor source if it located right across the border in Phoenix. Unfortunately, because it is generally considered difficult to change from being a Title V source to a synthetic minor, this facility may be forced to remain a major source even after GRIC completes its TIP later this year. Importantly, because GRIC has had limited industrial development in the past, if part or all of the Community is included in the 8-hour nonattainment area, the potential for industrial development will continue to be disproportionately limited. These disparities would be particularly harmful because, for the first time in its history, the Community has the resources to encourage more sustainable development that would create quality jobs for its members.

10. Levels of control of emission sources

The Gila River Indian Community is currently completing the first Tribal Implementation Plan (TIP) in the country. The GRIC TIP will include emission limitations and permit requirements, including air pollution control technology requirements for industrial and area sources consistent with Reasonable Available Control Technologies (RACT). In addition, GRIC is developing emission limitations, permit requirements and air pollution control technology requirements consistent with Best Available Control Technologies (BACT) for those industrial facilities deemed to pose a potentially higher degree of risk to human health and the environment. For example, the GRIC DEQ is completing a permit for the medical waste incinerator in the Lone Butte Industrial Park that has more stringent requirements than the recently issued federal regulations (40 CFR 60 Subpart Ce). The GRIC TIP is scheduled to be submitted to EPA Region 9 in January of 2001 for approval. Under the TIP, new, major sources of air pollution proposing to locate at GRIC will be required to comply with either New Source Review (NSR) or Prevention of Significant Deterioration (PSD) preconstruction permitting requirements consistent with the CAA. Right now, facilities that locate in the current 1-hour nonattainment area would need to meet NSR; facilities locating in the attainment portion of GRIC would need to meet PSD. In the scoping document for the TIP (attached) that GRIC widely distributed for comment and which was recently supported by the GRIC Council by unanimous vote, the GRIC DEQ states that it does not intend to take over NSR modeling at this time. Consequently, NSR would remain with EPA until a time in the future when the GRIC DEQ air program has developed modeling capacity. The air pollution control requirements contained in the GRIC TIP will be consistent with Maricopa County requirements and will comply with requirements of the Clean Air Act.

11. Regional emission reductions impacts

Emissions of precursors to ozone from all sources located within GRIC are so small that they do not impact the NAAQS on either a local or a regional basis. However, GRIC has been active in regional air quality efforts including the Grand Canyon Visibility Transport Commission as well as the Western Regional Air Partnership (WRAP). The DEQ director was the co-chair of the WRAP oversight committee during its first year and DEQ staff have been involved in a number of WRAP technical committees. GRIC has been and continues to be committed to working with other jurisdictions to develop regional approaches to air quality solutions.

THE DESIGNATION GUIDANCE IS INCONSISTENT WITH THE TRIBAL AUTHORITY RULE AND IS CONTRARY TO THE TRUST RESPONSIBILITY

The Tribal Authority Rule (TAR) promulgated by EPA in 1998 is arguably the most supportive rule of tribal sovereignty ever developed by a federal agency. We commend EPA for its long-standing support of tribal authorities to manage environmental quality. GRIC responded to the positive goals of the TAR by being the first Tribe in the U.S. to seek and obtain Treatment as a State status under the provisions of the rule. In addition, GRIC is now completing the first Tribal Implementation Plan (TIP) made possible by promulgation of the TAR. The GRIC TIP will enable the Community to control minor sources of air pollution as well as major and area sources of pollution that have not been regulated by the Community or EPA in the past. The Community has energetically taken on the responsibilities of these complex programs in order to protect human health and the environment as well as to exercise its rights and responsibilities as a sovereign government. It is our understanding that GRIC was the first jurisdiction in the U.S. to submit a recommendation to EPA for designation under the new 8-hour standard (letter of September 2, 1999). Furthermore, GRIC intervened in the litigation challenging the TAR, because of its strong commitment to the goals of tribal management of air quality.

Consequently, we were stunned by the apparent contradictions between the TAR's goal of tribal management of air quality and the initial 8-hour ozone Guidance published by OAQPS this April. We thank EPA for its responsiveness to our concerns about the document, the willingness of EPA staff to meet with Tribes and the willingness to listen. We realize that it took considerable time and effort to issue an additional Guidance for Tribes this July. However, we are still concerned that, despite the 11 modifying factors, the Guidance still assumes that tribal lands within an MSA that has a violating monitor should be classified as nonattainment. The assumption actually places Tribes under the de facto air quality jurisdiction of the surrounding state, and puts the burden on the Tribe to make a case for exclusion. We feel that the assumption should be that Tribes, being separate jurisdictions, are in attainment, unless data shows otherwise. In GRIC's situation, because of political subdivisions (counties) that do not relate to tribal boundaries or jurisdiction, the Guidance seems to assume that the Community will now and forever be nonattainment ONLY because of the nonattainment problems of nearby urban areas. This assumption directly contradicts tribal sovereignty, the federal government's government-to-government relationship with Tribes and the trust responsibility to safeguard tribal interests. What the TAR seemed to provide (a way for tribes to fully participate in the Clean Air Act and to manage their own air quality), the 8-hour ozone Guidance seems to take away. Unless GRIC has the full ability to make a meaningful recommendation as to its attainment status separately from the state, we will not be full partners in the nation's air quality regulatory structure. Designating GRIC as a nonattainment area for ozone effectively imposes the responsibility and burden of nonattainment on the Community without the authority to do anything about that status. The only identifiable potential source of ozone precursors of any measurability, traffic on Interstate 10, is a source over which GRIC exercises little jurisdiction. While GRIC may decide not to adopt what would amount to meaningless nonattainment area plan requirements for mobile sources in its TIP, at this time, it would seem that EPA would have to adopt and impose the requirements to meet its responsibilities under the Clean Air Act.

Importantly, designation as attainment for GRIC does not preclude or even discourage cooperative efforts between jurisdictions in solving local or regional air quality problems. To the contrary, full acknowledgment of GRIC's own authorities will promote true cooperation among equal partners.

In closing there is an additional, practical point for your consideration as you evaluate this recommendation. Designating GRIC as unclassifiable with a commitment to gather the monitoring data would make little real difference in the actions taken to address air quality on GRIC lands. In view of the legal pendency of American Trucking, it is unlikely that actual implementation of an 8-hour standard will begin in less than 24 months. Consequently, the three year period needed for GRIC to accurately determine its attainment status is not likely to be much longer than the period required before actual implementation of the new standard.

We realize, after many hours of discussion with very sincere EPA managers and staff, how seriously these issues are viewed within the Agency. These issues are also felt very deeply by the Gila River Indian Community. We look forward to a continued positive and productive relationship with your agency as we develop our TIP. We are highly committed to working with EPA to find the optimum strategies for protecting human health and the environment at GRIC and throughout all of the United States. We hope that you find our recommendation in our September 1999 letter and this additional letter persuasive and that you designate GRIC lands as unclassifiable for the 8-hour ozone standard. We feel this recommendation is fully consistent with § 107(d)(1) of the CAA. If you have questions about any aspect of this letter or need more information, please contact Pat Mariella, Ph.D., director of the GRIC Department of Environmental Quality, at (520)562-2234 extension 225.

Sincerely,

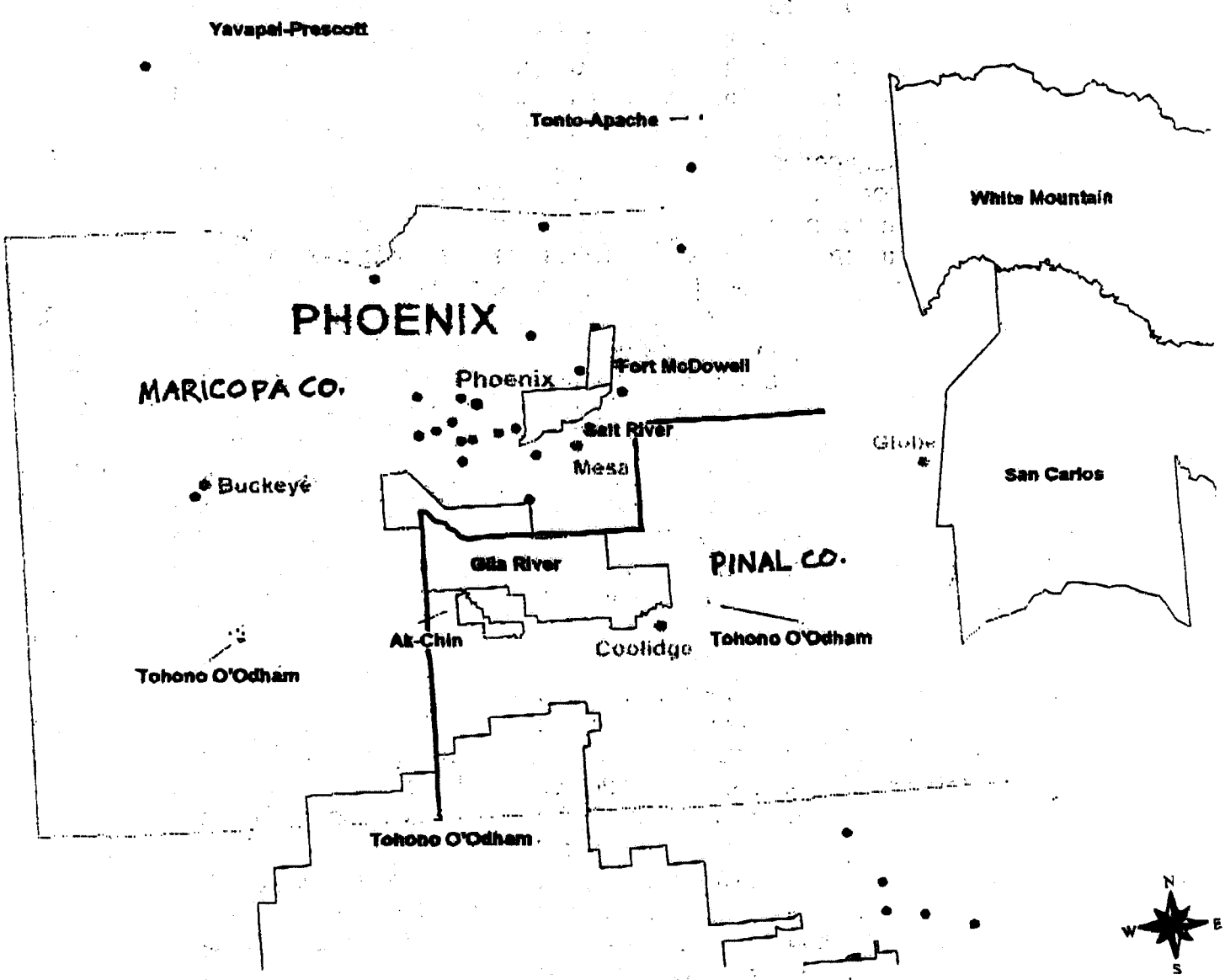
Richard P. Narcia for

Donald R. Antone, Sr.
Governor

cc: GRIC Council members
Jane D. Hull, Governor, State of Arizona
John Seitz, OAQPS
Amy Zimpfer, EPA Region 9
Doug McDaniel, EPA Region 9
Nancy Wrona, ADEQ
James Bourey, MAG
Don Gabrielson, Pinal County AQCD
Al Brown MCESD
Pat Mariella, GRIC DEQ

Indian Lands And The New 8-Hour Ozone NAAQS

Phoenix Area Tribes



NON-ATTAINMENT AREA (proposed)

Ozone Monitoring Stations (1997-99 Data)

- **Design Value Within 8-Hour Std.**
- **Design Value Exceeds 8-Hour Std.**

Indian Reservation

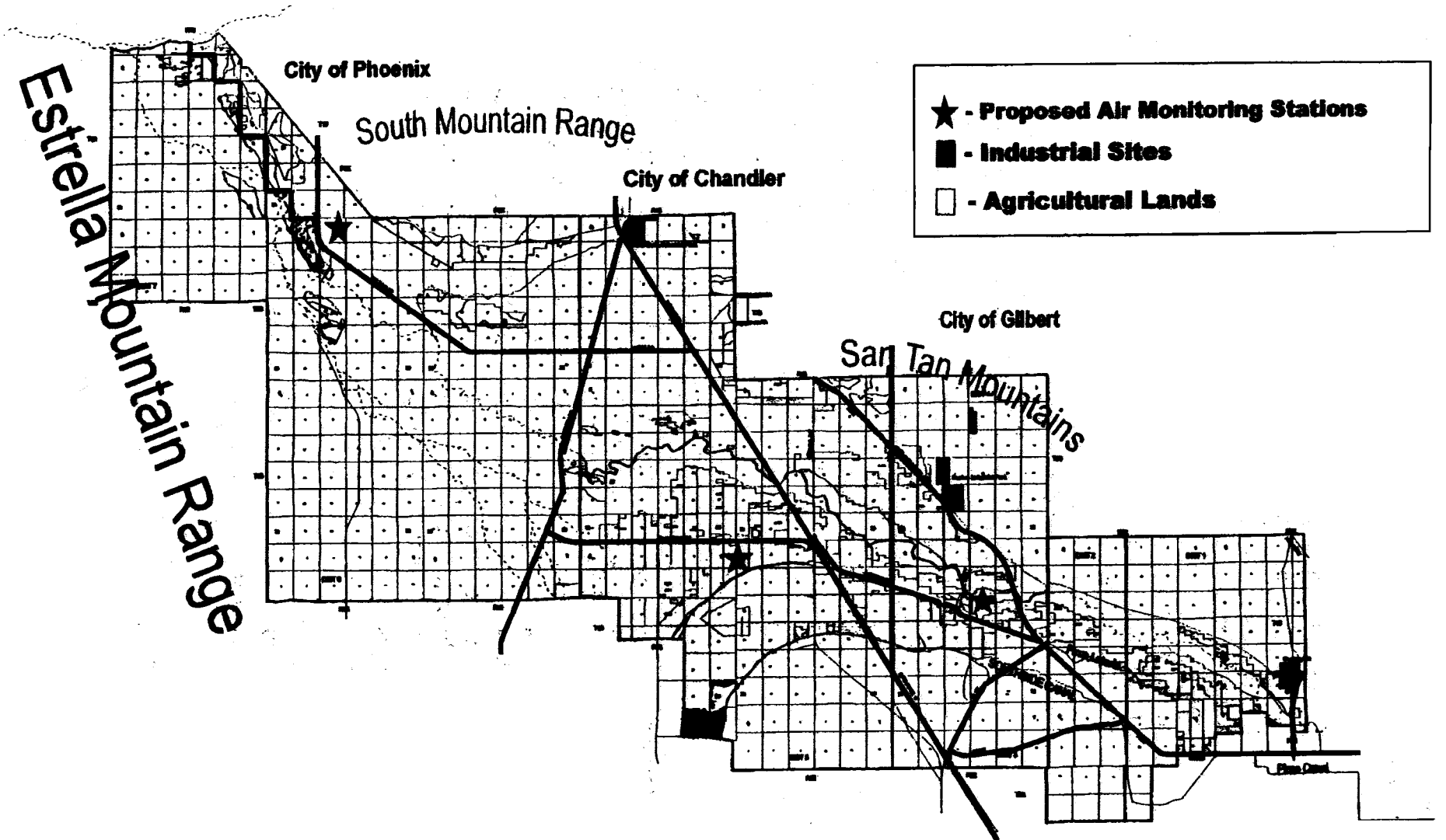
- City

30 0 30 Miles

US EPA Region 9, Air Div. DG

August 2000

Gila River Indian Community



Major Transportation Routes