Los Coyotes Band of Indians

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Felicia Marcus, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
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Doug Mc Daniel, Air Division Tribal Team Leader
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

October 20, 2000

RE: 8-HOUR OZONE STANDARD DESIGNATION FOR THE LOS COYOTES BAND OF INDIANS

Dear Ms. Marcus and Mr. Mc Daniel,

The Los Coyotes Band of Indians (herein after Los Coyotes) has received the draft document, "Guidance on 8-Hour Ozone Designation for Indian Tribes" (referenced herein as "Guidance for Indian Tribes"). Dated July 17, 2000, this document directs interested Tribes to make recommendations for designating their lands as attainment, unclassifiable, or nonattainment, with the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) by September 30, 2000. We have also received the "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone Designation for Indian Tribes" (referenced herein as "Boundary Guidance"), and the memorandum extending that deadline to October 31, 2000. This letter responds to that direction and recommends that the land within the exterior boundaries of the Los Coyotes Reservation be designated as attainment/unclassifiable.

Los Coyotes is a federally recognized Indian Tribe. The Los Coyotes Indian Reservation was established on June 19, 1900 under the authority of the Act of January 12, 1891. Lands were previously set-aside for Los Coyotes under the Executive Order of May 5, 1889, with additional lands provided by the Executive Order of April 13, 1941. Los Coyotes has approximately 290 Tribal members, but the on reservation population is only 90 persons.

Los Coyotes occupies a Reservation of 25,049.63 acres in northeast San Diego County, California, approximately 70 miles northeast of the City of San Diego. Los

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FAX TRANSMITTAL # of pages ▶ 6

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Coyotes is located in a rural area and is itself a rural community. The reservation is bordered by Cleveland National Forest lands to the West and North, Anza Borrego State Park lands to the North and East, Bureau of Land Management lands to the South, and Vista Irrigation Water District lands to the South and West, with a very small area of privately held land on the western boundary. The closest significant urban area is Escondido, California, located approximately 48 miles southeast of Los Coyotes. There are no major or minor air pollution sources located on or adjacent to the reservation. The largest category of air pollution on Los Coyotes is Particulate Matter, from approximately eighteen (18) miles of dirt roads. States Highway 79 is the closest major highway to Los Coyotes and is located approximately five (5) miles to the west of the reservation.

As with other federal agencies, the U.S. Environmental Protection Agency (EPA) has a federal trust responsibility to federally-recognized tribes, which requires that the Agency consult with and consider the interests of tribes when taking action that may affect tribal rights or trust resources. This trust responsibility is separate and apart from the requirements of the Clean Air Act (CAA) §107(d) designation process and has been consistently reaffirmed by the courts, executive orders and agency policy statements. The 1984 Indian Policy consolidated and expanded on previously issued statements of policy that recognized the importance of tribal governments in regulatory activities that impact reservation environments. The keynote of this policy was "to give special consideration to Tribal interests in making agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands."

In a letter dated August 2, 2000, from Amy K. Zimpfer, Acting Director, Air Division, US EPA, Region IX, Los Coyotes was informed that it appeared from preliminary review of air monitoring data, the Los Coyotes Reservation is located within a Metropolitan Statistical Area (MSA) where a violation of the 8-Hour ozone NAAQS has been measured. The letter went on to say that, as a consequence, the surrounding area, as well as Los Coyotes, may be designated nonattainment. The U.S. EPA invited Los Coyotes to recommend a designation within a very short timeframe, while expressing EPA's understanding that it needs to consult with Tribal governments. The letter stated that EPA would do so before and during the 120-day discussion and comment period required before EPA can make final designation.

Before responding to the EPA's suggestion that tribes within nonattainment MSAs demonstrate or justify why the specified eleven (11) mitigating factors should result in an attainment/unclassifiable designation, Los Coyotes first articulates why designation according to MSAs is an inappropriate principle to apply to the Los Coyotes Reservation. First and foremost, Los Coyotes understands from page four (4) of the "Guidance for Indian Tribes" that the "Boundary Guidance" encourages states and tribes to base attainment and nonattainment boundaries on MSAs or Consolidated MSAs (C/MSAs). It appears then that U.S. EPA itself made its own determination that Los Coyotes would be included in the neighboring and surrounding MSA.

The Los Coyotes Reservation understands from the "Guidance for Indian Tribes" that EPA chose to use the Office of Management and Budget's (OMB) MSAs and C/MSAs though EPA representatives have intimated that they were directed to use MSAs and C/MSAs, because of the social and economic integration of such areas and to encourage coordinated efforts. Such principles do not readily apply where Los Coyotes is involved because Los Coyotes is neither socially nor economically integrated into the surrounding MSA and because of the historical absence of equity and fairness in Los Coyotes' dealings with the state and local governments. Thus, the exterior jurisdictional boundaries of the Los Coyote Reservation shall be the boundaries for Los Coyotes' 8-Hour ozone designation.

From discussions and correspondence since the August 2, 2000 letter, we understand that EPA is designing a new approach that is more respectful of tribal sovereignty and the government-to-government relationship between the sovereign nation of Los Coyotes and the government of the United States of America, and is demonstrative of the trust relationship and obligations that the United States government strives to honor with integrity. We look forward to such consultation and look forward to welcoming you to the Los Coyotes Reservation so that you can see and appreciate the conditions and absence of major emissions sources on Los Coyotes and the absence of (major and minor) emission sources in the surrounding areas. Major and minor emission sources in the greater San Diego area, and the development within their jurisdiction, are contributing to transport issues that have created a growing concern among the members of Los Coyotes and residents, visitors, and patrons of the Los Coyotes Reservation.

We appreciate the extension of time to recommend a designation for the Los Coyotes Reservation to October 31, 2000. While we understand and appreciate the urgency of this matter, we trust that you will understand why our recommendation is only a preliminary one. The limited designation options fail to appropriately distinguish areas adversely impacted by unhealthful emissions sources located in surrounding areas from those adversely impacted by unhealthful emissions sources located within. A nonattainment designation does not effectively convey information about the absence of emission sources within the Los Coyotes Reservation without appearing to also lay responsibility for adverse conditions caused by transport with the governmental entity with jurisdiction over that area, namely the Los Coyotes Band of Indians.

Alarmed by the short timeframe in which to respond to the August 2, 2000 correspondence, Los Coyotes, together with other tribes, organized tribal meetings and requested informational meetings with EPA. While the presence and participation of representatives of the Air Division of EPA in these meetings is greatly appreciated, it deserves repeating that the affected tribes, who once again had to remind EPA of its responsibility to actually meet and confer with tribes, initiated the process. We appreciate the candid discussion of EPA's failings in this endeavor and wish to acknowledge that representatives of EPA have taken responsibility and extended apologies for the federal government's failure to begin consulting with tribes as early as three (3) years ago when the federal government began its consultation process with the states. Without formal notice, consultation, and a reasonable opportunity to provide meaningful comment, the

current designation process provides Los Coyotes with merely an inconsequential role in the determination of a matter that substantially affects Los Coyotes' governmental responsibilities and cultural values. The Los Coyotes Band of Indians will continue to exercise its sovereignty and demand that the U.S. government take steps consistent with its trust responsibility and its commitment to government-to-government relations through consultation.

Los Coyotes is formally requesting that it be designated as attainment/unclassifiable for the 8-Hour Ozone NAAQS. Los Coyotes believes that an attainment/unclassifiable designation is consistent with CAA § 107(d)(1) because no valid information exists to determine whether the area is meeting or not meeting the 8-hour ozone standard. Los Coyotes does not have the requisite three (3) years of air quality monitoring data to warrant any designation other than attainment/unclassifiable.

The quality of air that we our children and grandchildren, and all of our relations breathe is very important to us. We have been accustomed to very clean and high quality air. We understand now, however, that the activities of nearby local governments and enterprises within their jurisdictions, combined with the characteristics of our airshed, have caused unhealthful air conditions in violation of the 8-hour Ozone National Ambient Air Quality Standards that occurs within the Metropolitan Statistical Area and may also have significant unhealthful effects upon the Los Coyotes Reservation. Los Coyotes expects to learn more about the technical, financial and organizational requirements for establishing an Air program, especially an air quality-monitoring program, through the future consultations with the U.S. E.P.A.

In the event that EPA decides not to modify its approach to tribal 8-hour ozone designations and impose a nonattainment designation based upon the surrounding C/MSA. Los Coyotes provides EPA with the following discussion on the eleven (11) mitigation factors for EPA's serious and thoughtful consideration regarding why The Los Coyotes Reservation should be designated attainment/unclassifiable.

1.) Emissions and air quality in adjacent areas (including adjacent C/MSAs):

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

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

4.) Location of emissions sources (emissions sources and nearby receptors should generally be included in the same nonattainment area;

5.) Traffic and commuting patterns;

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

7.) Meteorology (weather/transport patterns);

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

9.) Jurisdictional boundaries (e.g., counties, air districts, existing 1-hour nonattainment areas, reservations, etc.);

10.) Level of control of emissions sources; and

11.) Regional emissions reductions impacts (e.g., Nox, SIP, or other enforceable regional strategies).

In any event, Los Coyotes believes that the attainment/unclassifiable designation is appropriate because there are no significant or minor sources within the Los Coyotes Reservation that contributes to the ozone problems in San Diego County and beyond. Rather, Los Coyotes is essentially a victim of ozone transport from the greater San Diego County area.

We look forward to EPA's consultation with us in the near future on the 8-hour ozone designation; we also look forward to EPA's improved future consultation with regard to other environmental programs and requirements. We hope that the information and suggestions contained in this letter are seriously considered by U.S. EPA so that the mistakes, oversights, and resulting distrust experienced in this designation process becomes relegated to history.

We are hopeful that we can engage in detailed discussion regarding the short and long-term planning necessary for our own environmental programs and responses to federal environmental programs. We anticipate that EPA has numerous other regulatory decisions and programs to implement, and we will make ourselves available for consultations with EPA in order to prioritize our environmental programs and put together short and long-term development plans for our environmental department.

We see the need for consultation regarding technical assistance and planning and administrative assistance. As is often the case in Indian Country, and especially for Tribes in California, federal funding of programs is inadequate. Thus, we would like EPA to share its knowledge and experience regarding what it sees as Los Coyotes' need for future resources, whether it be in the form of equipment, personnel, training, professional services, etc.

We look forward to working with you to protect the quality of air on the Los Coyotes Reservation and to protect the health and well being of members, residents, visitors, patrons, and neighbors of the Los Coyotes Reservation.

Thank you for your time and serious consideration for these issues pertaining to the Los Coyotes Reservation and its People. If you have any questions or concerns pertaining to this letter please feel free to contacts us here at Los Coyotes. You may reach Catherine Saubel, Spokeswoman, Los Coyotes Band of Indians or Evelyn Duro, Tribal Administrator at (760) 782-0711; or Melody Hill, Environmental Director, Los Coyotes Band of Indians at (760) 782-0712.

Sincerely,

Catherine Saubel

Catherine Saubel, Spokeswoman
Los Coyotes Band of Indians

Melody Hill, Environmental Director
Los Coyotes Band of Indians

Cc: Amy Zimpfer, Acting Air Division Director
John Kennedy, Chief