Soboba Band of Mission Indians

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October 30, 2000

Felicia Marcus, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORA-1)
San Francisco, California 94105-3901

Doug McDaniel, Air Division Tribal Team Leader
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (AIR-8)
San Francisco, California 94105

Re: 8-Hour Ozone Designation under the National Ambient Air Quality Standards (NAAQS) for the Reservation of the Soboba Band of Luiseno Indians

Dear Ms. Marcus and Mr. McDaniel:

This letter is in response to the August 2, 2000 letter from Amy K. Zimpfer, Acting Director, Air Division, U.S. E.P.A., Region IX, addressed to "Tribal Leader." That letter invites participation from tribes such as the Soboba Band of Luiseno Indians in the process of designating areas as nonattainment under the new 8-hour ozone National Ambient Air Quality Standards (NAAQS). Attached to that letter were two (2) documents entitled "Guidance on 8-hour Ozone Designations for Indian Tribes" (referenced herein as "Guidance for Indian Tribes") and "Boundary Guidance on Air Quality Designations for the 8-hour Ozone NAAQS" (referenced herein as "Boundary Guidance").

The August 2, 2000 letter informed the Soboba Band that it appeared from a preliminary review of air monitoring data, their 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 the Soboba Reservation, might be designated nonattainment. The U.S. E.P.A. invited the Soboba Band to recommend a designation within a very short timeframe, by September 30, 2000, while expressing the U.S. E.P.A.'s understanding that it needs to consult with tribal governments. The letter stated that the U.S. E.P.A. would do so before and during the subsequent 120-day discussion and comment period required before the U.S. E.P.A. can make final designations.

Before responding to the U.S. E.P.A.'s suggestion that tribes within nonattainment MSAs demonstrate or justify why the specified 11 mitigating factors should result in an attainment/unclassifiable designation, the Soboba Band first articulates why designation according to MSAs is an inappropriate principle to apply to the Soboba Reservation. First and foremost, the Soboba Band 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 Metropolitan Statistical Areas (MSAs) or Consolidated MSAs (C/MSAs). It appears then that the U.S. E.P.A. itself made its own determination that the Soboba Reservation would be included in the neighboring and surrounding MSA.

The Soboba Band understands from the "Guidance for Indian Tribes" that the U.S. E.P.A. chose to use the Office of Management and Budget's (OMB) MSAs and C/MSAs, though U.S. E.P.A. 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 the Soboba Reservation is involved because the Reservation is neither socially nor economically

integrated into the surrounding MSA and because of the historical absence of equity and fairness in the Soboba Band's dealings with the state and local governments. Thus, the exterior jurisdictional boundaries of the Soboba Reservation shall be the boundaries for the Soboba Band of Luiseno Indian's 8-hour ozone designation.

From discussions and correspondence since the August 2, 2000 letter, we understand that the EPA is designing a new approach that is more respectful of tribal sovereignty and the government-to-government relationship between the sovereign nation of the Soboba Band of Luiseno Indians 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 Soboba Reservation so that you can see and appreciate the conditions and absence of major emissions sources on the Reservation and the presence of major emissions sources and the encroachment of surrounding local governments and developments within their jurisdictions contributing to the transport issues that have created a growing concern among members of the Soboba Band.

We appreciate the extension of time to recommend a designation for the Soboba Reservation to October 31, 2000. While we understand and appreciate the urgency of this matter, we trust that you will understand why our recommendation found later in this letter is only a preliminary one.

The Soboba Band of Luiseno Indians identifies and calls upon the U.S. E.P.A. to recognize and effectively communicate in its final designation for the Soboba Reservation that the limited designation options fail to appropriately distinguish areas adversely impacted by unhealthful emissions sources located in surrounding areas from those areas adversely impacted by unhealthful emissions sources located within. While the Soboba Band certainly shares the federal government's concern for the health and well-being within the Soboba Reservation, a nonattainment designation does not effectively convey information about the conditions occurring within the Soboba Reservation without appearing to also lay the responsibility for such conditions with the governmental entity with jurisdiction over that area, namely the South Coast Air Quality Management District.

Alarmed by the short timeframe in which to respond to the August 2, 2000 correspondence, the Soboba Band of Luiseno Indians, together with other tribes, organized tribal meetings and requested informational meetings with the U.S. E.P.A. While the presence and participation of representatives of the Air Division of the U.S. E.P.A. in these meetings is greatly appreciated, it deserves repeating that the affected tribes who once again had to remind the U.S. E.P.A. of its responsibility to actually meet and confer with tribes initiated the process. We appreciate the candid discussions of the U.S. E.P.A.'s failings in this endeavor and wish to acknowledge that representatives of the U.S. E.P.A. 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. The Soboba Band 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.

In the absence of consultation, planning, and prioritizing of air quality monitoring by the U.S. E.P.A. with the Soboba Band, which does not have an Air program, either through the U.S. E.P.A. or any other organization or program, and which does have a General Assistance Program (GAP) grant, the Soboba Band does not have the requisite three (3) years of air quality monitoring data to warrant any designation other than attainment/unclassifiable. Thus, the Soboba Band urges the U.S. E.P.A. to designate the Soboba Reservation as attainment/unclassifiable.

The quality of the air that we, our children and grandchildren, and the creatures of Mother Earth 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 surrounding 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 surrounding [Combined] Metropolitan Statistical Area (CMSA or MSA) and may also have significant unhealthful

effects upon the Soboba Reservation. The Soboba Band 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 consultation process with the U.S. E.P.A.

In the event that the U.S. E.P.A. decides not to modify its approach to tribal 8-hour ozone designations and impose a nonattainment designation based upon the surrounding C/MSA, the Soboba Band provides the U.S. E.P.A. with the following discussion of the some of the 11 mitigating factors for the U.S. E.P.A.'s serious and thoughtful consideration regarding why the Soboba Reservation should be designated attainment/unclassifiable.

1) **Emissions and air quality in adjacent areas (including adjacent C/MSAs);**
The Hemet-San Jacinto valley, in which the Soboba Reservation is located, is largely a residential and agricultural area in which there is very little industrial development. Automobiles would be the primary source of ozone causing pollutants. With respect to the larger area, the Soboba Reservation is located in the South Coast C/MSA, an area listed as non-attainment. However, because of the relatively small number of air monitors, all C/MSA's in Southern California are considered non-attainment, even though we believe adequate monitoring has not taken place.

2) **Population density and degree of urbanization including commercial development in Indian Country (e.g., shows a significant difference from surrounding areas);**
The Soboba Reservation being home to 520 people and being approximately 9.2 square miles in size has a population density of about 56.5 people per square mile. In comparison the closest community of San Jacinto, with a population of 26,500 people and an area of 15.6 square miles, has a population density of about 1,698.7 people per square mile. The second closest community of Hemet, with a population of 62,751 and an area of approximately 25.97 square miles, has a population density of approximately 2,416.3 people per square mile. These numbers indicate the Soboba Reservation is considerable less densely populated and less urbanized than neighboring communities. With respect to commercial development the reservation is home to a small sand and gravel mining operation (~ 120 acres in size) and a casino that includes a restaurant.

3) **Monitoring data representing ozone concentrations in local areas and larger areas (i.e., urban or regional scale);**
With respect to the Soboba Reservation, there is no monitoring data at the urban scale. The three closest large area monitors are located at; Perris (DV 101) which is approximately 18 miles directly east of Soboba, Banning (DV 124) which is approximately 11 miles north of Soboba, and Lake Elsinore (DV 98) which is located approximately 25 miles southwest of Soboba.

4) **Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area);**
Emission sources on the Reservation are limited to automobile, truck traffic, and occasional small-scale garbage burning by Reservation residents.

5) **Traffic and commuting patterns;**
The traffic on the reservation includes: 1) The traffic from the 520 residents. (It should be noted that of the 520 residents perhaps approximately only one half are in the age range that would drive automobiles.) 2) The sand and gravel operation which runs approximately 30 trucks, three to four times a day, through the reservation. 3) The traffic from the casino, which has an estimated minimum 200 cars per day and has a maximum capacity of approximately 2,000 cars. The Casino parking lot typically fills on weekends or special events. The busiest traffic times with respect to casino traffic is between 8 p.m. and 2 am. This is significant with respect to ozone since during this time period heat and sunlight necessary for ozone formation are not present. In comparison, the Ramona

Expressway, which skirts the reservation, but is not a part of the reservation, carries approximately 30,000 vehicles per day (This number, 30,000, is estimated near the Ramona Expressway, Interstate 215 junction, which is about 20.5 miles from the Reservation). Assuming a full parking lot at the Casino (the cars both coming onto and leaving the reservation), the sand and gravel company running 30 trucks, four times a day through the reservation and 260 residents driving on and off the reservation, still only represents fifteen percent of the traffic on the Ramona expressway, one road in the nearest community. Therefore, traffic and commuting is minimal in comparison to neighboring communities.

6) **Expected growth (including extent, pattern and rate of growth);**
There is growth planned for the Soboba Reservation. This growth is in the very early planning stages and will involve expansion of the Casino. With respect to ozone this growth will increase traffic flowing on and off the Reservation. However, as noted above, Reservation traffic accounts for a very small percentage of regional traffic and an increase in Reservation traffic will likely be minimal with respect to the greater area.

7) **Meteorology (weather/transport patterns);**
During Southern California summers, winds typically blow from the western coastal region in an eastward direction. It is well known that much of the inland area smog is a result of the heavily populated / industrialized regions situated to the west of inland areas. If the Soboba Reservation, being located close to the eastern end of the South Coast C/MSA, has air quality problems it is likely largely the result of pollutants from distant areas.

8) **Geography/topography (e.g., mountain ranges or other air basin boundaries);**
The Soboba Reservation is located at the eastern end of the Hemet-San Jacinto Valley. There are no air quality monitors in the Hemet-San Jacinto Valley. It should be noted that between each of the monitors used for the Soboba Reservation and the Soboba Reservation there are hills or small mountain ranges. Between the Perris (~elevation 1448ft.) monitor and Soboba (~elevation 1567 ft.) there are the Lakeview Mountains with various peaks upwards of 2500 feet. This same mountain range is also between Soboba and the Lake Elsinore (~ elevation 1250 ft.) monitor. Between the Banning (~elevation 2349 ft) monitor and Soboba there exist the San Jacinto mountains with a peak (Mt. Edna) of 4357 feet directly between Banning and Soboba. With this topography and no monitors directly in the Valley more local data should be gathered prior to classifying Soboba as non-attainment.

9) **Jurisdictional boundaries (e.g., counties, air districts, existing 1-hour nonattainment areas, reservations, etc.);**
The definition of a C/MSA states that C/MSA's are defined this way due to social and economic integration with surrounding areas. Due to cultural, economic, and historical conditions the Soboba Tribe should not be considered to be "socially and economically integrated" with its surrounding area and should therefore not be classified in the same C/MSA.

10) **Level of control of emission sources; and**
As previously stated the sources of emissions on the reservation are mostly automobile and truck traffic. Since most vehicles driven on or onto the Reservation are also driven into neighboring towns these vehicles must meet California emission standards.

11) **Regional emission reductions impacts (e.g., NOx SIP call or other enforceable regional strategies).**
Any emission controls set for the area will reduce the NOx in the area. The Reservation is not a part of the SIP.

We strongly encourage the U.S. E.P.A. to formulate a central contacts database so that the various programs, divisions, and offices of the U.S. E.P.A. will have correct contact information available at all times. Accordingly, we should develop a system to periodically update that database. We suggest that the database include at least the following information:

Description of Data	
Name, address, and phone number of Tribe or Indian Organization	Soboba Band of Luiseno Indians
Name of Reservation	Soboba Reservation
Name of Tribal Chairperson, Spokesperson, President, etc. or Indian Organization Chairperson	Robert J. Salgado, Sr.
Tribal Administrator	Ralph Ortegon
Name of governing body for the tribe, i.e., General Council, General Membership, Tribal Council, etc.	Tribal Council
Schedule of meetings of the governing body for the tribe	Weekly - Wednesay
Name and contact information to request to be added to agenda for meetings of the daily governance body	Vicki Arres, Office Manager Margaret Wallace, Secretary 909-654-2765
Name of environmental departments, if any	Soboba Environmental Programs Office
Names, addresses, phone numbers, titles, and environmental program responsibilities for environmental staff	Patricia Byrd, Environmental Director Soboba Tribal Hall, P.O. Box 487 San Jacinto, CA 92581 909-654-2765

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

We are hopeful that we can engage in detailed discussions regarding the short and long-term planning necessary for our own environmental programs and responses to federal environmental programs. We anticipate that the U.S. E.P.A. has numerous other regulatory decisions and programs to implement. Thus, we will make ourselves available for consultations with the U.S. E.P.A. 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 the U.S. E.P.A. to share its knowledge and experience regarding what it foresees as the 's needs 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 Soboba Reservation and to protect the health and well being of members of the Soboba Band of Luiseno Indians and residents, visitors, patrons, and neighbors of the Soboba Reservation.

Sincerely,

Robert J. Salgado, Sr.
Tribal Chairman

cc: Amy Zimpfer, Acting Air Division Director

John Kennedy, Chief
Technical Support Office

Sara Bartholomew, Project Officer
Air Grants in Southern California

Clancy Tenley
Indian Programs Office