Ak-Chin Indian Community

Community Government
42507 W. Peters & Nall Road, Maricopa, Arizona, 85239 ■ Telephone (520) 568-1000 ■ Fax: (520) 568-4566

July 9, 2003

Mr. Wayne Nastri,
Regional Administrator
U.S. EPA - Region IX
Mail Code - ORA-1
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: Ak-Chin Indian Community's Recommended Area Designation for the Revised 8-hour ozone NAAQS – Additional Support Documentation for "attainment" Designation Recommendation

Dear Mr. Nastri,

Thank you for the opportunity to submit a recommendation for the region under the Ak-Chin Indian Community's ("ACIC" or "Community" or "Reservation") jurisdiction for the 8-hour ozone National Ambient Air Quality Standard (NAAQS).

The Ak-Chin Indian Community remains firm on it's recommendation to preserve it's reservation designation as "attainment" for the upcoming 8-hour ozone NAAQS designations to be determined by the U.S. Environmental Protection Agency (EPA). As a recognized Native American community located within Indian Country, we believe in our heritage and our sovereignty (i.e., self governance). We also believe that as Native Americans we are more committed to human health and the environment than most states.

As you may know, the Community previously submitted a letter to Ms. Felicia Marcus (former Regional Administrator) on September 25, 2000 also recommending an "attainment" designation (see attached letter). The September 25, 2000 recommendation from the ACIC made several key points that it would like to expand upon in this letter.

Additionally, 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 (MSAs) with monitors that show violations will be presumed to be non-attainment but also lists 11 factors that will be considered by the EPA in determining whether areas located within Consolidated Metropolitan Statistical Areas (C/MSAs) that have non-attainment status should be excluded from the non-attainment designation.

Although this letter reiterates some of the key points of Ak-Chin's previous submittal, both the ACIC letter of September 25, 2000 and this letter need to be reviewed together to have a full understanding of the Community's position and it's justification to retain it's air shed "attainment" designation.

Background:

The Ak-Chin Indian Community and Reservation was established by Executive Order 1538, issued on May 28, 1912 by President Taft who initially signed for a 47,600-acre Reservation in Pinal County. However, the following year, September 2, 1912, he rescinded that order and reduced the Reservation to its current size of 21,840 acres. The Ak-Chin inhabitants refer to themselves as an Indian Community rather than a tribe because they are descended from the Tohono O'odham (Papago) and Akimel O'odham (Pima), who have lived together at Ak-Chin for more than a century.

The Ak-Chin Indian Community (the "Community") is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934, with Articles of Association (the "Articles") approved by the Secretary of Interior, December 20, 1961. This allowed for governance and membership status and the latest survey of the Ak-Chin Indian Community roll indicates that about 709 members are enrolled, 521 live on the reservation and 188 live off-Reservation. A total of 105 non-members live on the reservation.

The Ak-Chin Indian Community and Reservation is located in northwestern Pinal County, Arizona. More specifically, the Reservation is located approximately 35 miles southwest of Phoenix and 75 miles northwest of Tucson. The land base is 22,000 acres with approximately 15,000 acres of croplands operated by the Ak-Chin Farms Board. The Reservation is also located 22 miles from the Gila River Indian Community, whose reservation boundary is at certain points only a mile or two from the Ak-Chin Reservation northern boundary. As the towns, villages and neighboring farmers have recognized the uniqueness of the Ak-Chin Indian Community's government and status; relationship building has been on the increase. Evidence of recent successes has encouraged the Council to further develop and maintain relationships with its neighbors.

Organization:

The Ak-Chin Indian Community governing body consists of a Chairman, Vice-Chairman and Community Council. The Council consists of five members who are elected by the Community to serve three-year staggered terms. The Council appoints the Chairman and Vice-Chairman for a one-year term. The appointments are made from the elected five members. The Council acts in the best interest of the Community by adopting ordinances and policies, passing resolutions for the development and continuation of tribal departments, approving departmental budgets and overseeing Community boards.

Current Situation:

The Ak-Chin Indian Reservation is located within northwestern Pinal County in the state of Arizona. ACIC is 35-40 miles south of the Phoenix metropolitan area and the southern border of Maricopa County. Although, Pinal County does adjoin the Phoenix-Mesa MSA which still bears a 1-hour ozone non-attainment designation and Pinal County does fall within the Phoenix-Mesa C/MSA, the Ak-Chin Indian Reservation does not adjoin the Phoenix-Mesa MSA.

The ACIC believes that EPA's Boundary Guidance on Air Quality Designations for the 8-hour ozone National Ambient Air Quality Standards, issued March 28, 2000 to State and local air pollution control agencies and Tribes; and, EPA Guidance from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS), dated July 18, 2000, which encourages States and Tribes to base attainment and non-attainment boundaries on MSAs or C/MSAs, i.e., large, county-based areas defined by the Office of Management and Budget (based on information supplied by the U.S. Department of Commerce, Bureau of the Census), if applied to Indian Country would be arbitrary and capricious. And therefore, such assigned air shed boundaries (particularly without face-to-face government-to-government consultation) should not trigger a classification of either "non-attainment" or "unclassifiable" for the air shed under the jurisdiction of the Ak-Chin Indian Community (i.e., the Reservation).

The Ak-Chin Indian Community would also like to address EPA's belief that, "in most cases, Indian Country within C/MSAs should have the same designation as the surrounding area"; and based on the factors outlined in question 4 and 5 of the March 28, 2000 Boundary Guidance document, "there may be situations where a different designation is appropriate."

ACIC response to question 4: "What factors should a Tribe consider when recommending a designation?"

"-Any area with an ozone monitor that measures a violation of the NAAQS."

- Monitoring data does not show that the Ak-Chin Indian Reservation or surrounding Pinal County have ever violated the 8-hour ozone standard of the NAAQS.
- The Administrator has never imposed a 1-hour or 8-hour ozone "non-attainment" designation on Pinal County or the Ak-Chin Indian Reservation.

"-Any area located within a C/MSA where a violation of the NAAQS has been measured. However, see the list of 11 mitigating factors below."

- A rational analysis of Pinal County's monitoring data from relevant emission sources demonstrates that Pinal County (including the Ak-Chin Reservation)

does not contribute significantly to any ozone violations in adjoining Maricopa County.

"-Any area with sources of ozone precursors that contribute to ambient air quality in a nearby nonattainment area (an area that does not meet NAAQS). However, see the list of 11 mitigating factors below."

- There are no significant sources of ozone precursors within the boundaries of the Ak-Chin Indian Community (ACIC is located in northwestern Pinal County). Pinal County and the ACIC have never been a member of the Maricopa Association of Governments (MAG), the metropolitan planning agency responsible for ozone non-attainment planning and ozone-related transportation conformity planning in adjoining Maricopa County, nor have Pinal County and ACIC been a part of the Phoenix-Mesa MSA.

"-Any area located within an area previously designated as nonattainment for the 1-hour ozone NAAQS."

- MAG has never exercised ozone non-attainment planning authority in Pinal County, and does not have the jurisdiction to exercise it's planning authority over the Ak-Chin Indian Community. Furthermore, MAG has not made ozone-related findings regarding transportation conformity in either Pinal County or the Ak-Chin Reservation.

ACIC response to question 5: "How does ozone transport apply?"

The Ak-Chin Indian Reservation does not have significant sources that would exceed the 8-hour ozone NAAQS for air emissions. Phoenix, Arizona.(35-45 miles north of the Ak-Chin Indian Reservation) is the nearest area that has been designated "non-attainment" for 8-hour ozone emissions. Transport of potential pollutants has been identified to move in a northeasterly direction, away from the Ak-Chin Reservation and its exterior boundaries with Pinal County, e.g., toward the Phoenix-Mesa MSA not the other way around as suggested by the proposed 8-hour ozone designation of "non-attainment" for Pinal County. There are no significant or violating sources for ozone air emissions south of the Reservation. Therefore, no significant outside ozone pollutants would be passing through the Ak-Chin Reservation from south to north.

ACIC response to the "eleven mitigating factors" EPA will consider when determining exclusion from the non-attainment designation is as follows:

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

   The Ak-Chin Indian Community is located in northwestern Pinal County (see attached map) and Pinal County 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

a relatively low population density. In contrast, the majority of Maricopa County (including the city of Phoenix) is currently designated as a serious non-attainment area for ozone (1-hour standard).

The ACIC does not have any major stationary sources of air pollution. The single largest source of vehicle miles traveled at ACIC is from State Route (SR) 347 which runs north-south, bisecting the Reservation into eastern and western quadrants. SR 347 connects the town of Maricopa and Stanfield and provides access to Interstate 8 (I-8) for some travelers. Because SR 347 is a State highway, it is outside of the control of the ACIC. Despite being the single largest source of ozone precursor emissions at ACIC, SR 347 is a relatively insignificant, minor source of ozone.

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 ACIC by ACIC 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 Ak-Chin Indian Community with an on-reservation population of 626 is a rural area and has a very low population density.

The ACIC currently has a land base of 22,000 acres of which 15,000 acres are in agricultural production. The ACIC will 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.

Metropolitan Statistical Areas, according to the U.S. Office of Management and Budget (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. The ACIC is neither economically or socially integrated with the Phoenix-Mesa MSA, nor is the ACIC adjoined to the Phoenix-Mesa MSA.

One of the most significant economic barriers the ACIC faces is it's lack of economic integration with surrounding cities. In general, Ak-Chin has had very few ways to benefit from the growth of the small town of Maricopa. ACIC does not receive revenue sharing from state or other local taxes. Because the ACIC is not a political

subdivision of the state, the Community provides it's own governmental services with it's own resources, including development and maintenance of roads.

The ACIC has only one small retail establishment that provides limited groceries and gas and Community members pay city and state retail taxes as a result. Only with the opening of a casino has there been some turnaround in the prevailing pattern of economic deficit at ACIC.

There are a few people who commute from off-Reservation to work for the Community. Conversely, even fewer people live at ACIC and work off-Reservation. The Community has 709 enrolled members, 188 of these members live off-Reservation (many off-Reservation members work in surrounding cities and towns). There are 521 enrolled members and 105 non-members living on the Reservation.

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

The ACIC currently does not have monitoring data for any of the criteria pollutants. Monitored exceedance of the 1-hour and the 8-hour NAAQS for ozone have however occurred in north and northeastern Maricopa County. That 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 the ACIC) 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 (approximately 45 miles and downwind from ACIC) 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 (as the ACIC does) that Maricopa County and Pinal County, like many counties in the western U.S. are very large; together they total 14,592 miles. Consequently, the C/MSA that includes both counties is larger than many states. Treating these vast expanses of land as uniform urban areas is not meaningful or practical for air quality management.

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

Total emissions of precursors of ozone from within the boundaries of the ACIC do not and are not expected to contribute in the future to monitored exceedances of ozone within the Maricopa County non-attainment area (Phoenix-Mesa MSA). Emissions of precursors to ozone from all sources within the ACIC are extremely

unlikely to have any future measurable impact on the Phoenix-Mesa C/MSA non-attainment area.

5. Traffic and commuting patterns

The ACIC is bisected from the north to the south by State Route 347 which is the single largest contributor of precursors to ozone in the Community. Daily vehicle travel through the Reservation on SR 347 is unknown, although very little of this traffic is from the ACIC. Approximately 4 miles of SR 347 run through ACIC, two lanes in each direction. As noted, because of SR 347 status as a state route highway, ACIC has effectively no jurisdiction over it.

The second most traveled corridor at ACIC is Farrell Road which runs east and west across the western-half of the Community for approximately 2.5 miles. Farrell Road consists of one lane in each direction. Daily vehicle travel along Farrell Road is unknown. Most of the Farrell Road traffic is attributed to Community employees and members. County, tribal and BIA maintained roads account for the remaining limited arteries for vehicle traffic through ACIC.

Vehicle ownership at ACIC is low with less than 300 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 ACIC are virtually non-existent.

The largest employer at ACIC is the Casino located along SR 347, south of Farrell Road. Of the approximately 860 Casino employees, approximately 13% or 115 employees are Native American. Approximately 4% or 35 employees at the Casino are ACIC members who live near the Casino. The other part of the Casino workforce is drawn from off-Reservation, i.e., 5% from the Town of Maricopa, 15% from the Town of Stanfield area, 36% from the City of Casa Grande area, and 40% from the Phoenix metropolitan area. To encourage customers to visit, the Casino runs busses and shuttles from the urban areas on a regular basis. This bus/shuttle service reduces the single occupancy vehicle traffic to the Casino. The Ak-Chin Tribal Gaming Authority (TGA) employs 20 people. Approximately 40% or 8 of these employees are Community members and the rest of the TGA workforce comes from off-Reservation.

The second largest employer is Tribal Government which employs approximately 170 people (72 or 42 % are Community members). In most cases, Community members work and live within 1-2 miles of their jobs.

The Ak-Chin Farms located along Peters & Nall Road and employs approximately 90 people. Of the approximately 90 Farms employees, 13 employees or 14% are

Community members. The other part of the Farms workforce (77 employees) is drawn from surrounding areas.

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

The population at ACIC is not expected to increase beyond natural growth during this century. There is very little in-migration, which is limited to Community members who have moved off-Reservation for work or to attend school.

Close to 27% of ACIC members (approximately 188 people) live off-Reservation at this time. The largest population centers within the Community are the Village area, and the Mesquite and Greasewood subdivisions which house the majority of ACIC population (approximately 556 people). The remainder of population is housed at the Ak-Chin Farms subdivision (approximately 70 people).

Growth patterns of homes at ACIC are not identifiable. Homes in the Village area are located on family allotments and are surrounded by an acre or more of land. 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)

Air quality is likely to have remained well below the NAAQS for ozone within ACIC due to the summer meteorological patterns in Maricopa County. Air pollutants from Phoenix are transported away from the ACIC during the summer months since the natural wind patterns in the Phoenix valley are from the west toward the northeast.

Precursors of ozone generated in the Phoenix area, while reacting with sunlight and heat, are transported to the areas surrounding monitoring stations in northeast Maricopa County and beyond. There have been no monitored exceedances of the 1-hour or the 8-hour NAAQS at monitoring stations within approximately 40 miles of the Ak-Chin Indian Community. None of the monitoring stations surrounding the ACIC have ever documented an exceedance of the 1-hour or the 8-hour NAAQS for ozone.

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

There are geographic and topographic features preventing air pollution emissions from the greater Phoenix area (Phoenix-Mesa MSA) from impacting the ACIC. The South Mountain Range (2,690 feet), located between the ACIC and the greater Phoenix area, runs east-west along the northern boundary of the Gila River Indian Community (GRIC) and is 30 miles north of the ACIC northern-most boundary. The

Estrella Mountain Range (4,512 feet) runs north-south along the GRIC's western edge, i.e., 20-25 miles northwest of the ACIC.

In concert with the physical barriers identified above, which are massive enough and have sufficient altitude to prevent pollution from transporting onto the ACIC Reservation even during periods of inversions and stagnant air; prevailing winds through the ACIC Reservation are from southwest to northeast, i.e., away from the ACIC Reservation and toward the Phoenix-Mesa MSA.

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

The ACIC based its September 25, 2000 designation recommendation of attainment for the revised 8-hour ozone standard on meteorological data and monitoring data from neighboring jurisdictions along with the results of a preliminary ACIC air emission inventory.

The ACIC has had no past industrial development or stationary sources that would contribute to air pollution of it's air shed. There are no sources within the exterior boundaries of the Reservation that exceed either the 1-hour or 8-hour ozone NAAQS.

Should the ACIC Reservation be designated other than "attainment" when EPA makes its C/MSA designations for Indian Country, ACIC potential for industrial development will surely be disproportionately limited. Furthermore, since the Community now has the resources to encourage more sustainable development that would create quality jobs for it's members, these disparities would be particularly harmful.

10. Level of control of emission sources

With EPA financial support for a proposed Reservation Air Monitoring Program, the ACIC will initiate development of a Tribal Implementation Plan (TIP) that will include emission limitations, permit requirements and air pollution control technology requirements consistent with Best Available Control Technologies (BACT) for future industrial facilities deemed to pose a potentially higher degree of risk to human health and the environment. The air pollution control requirements contained in the ACIC TIP will be consistent with Pinal 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 the ACIC are so small or non-existent that they do not impact the NAAQS on either a local or a

regional basis. The ACIC is however committed to working with other jurisdictions to develop regional approaches to air quality issues.

The position of the Ak-Chin Indian Community remains firm, i.e., that ozone emissions under the 8-hour ozone NAAQS are not significant within the Reservation's exterior boundaries or in the surrounding area where the Ak-Chin Indian Reservation is located. Furthermore, the ACIC totally supports the language in a letter dated June 19, 2000, from Stanley Griffis, Pinal County Manager to Jaqueline Schafer, Director of the Arizona Department of Environmental Quality (please see attached letter dated September 25, 2000, pg. 5 of 7, to Ms. Felicia Marcus, EPA Region IX, Regional Administrator).

For the above reasons, the Ak-Chin Indian Community (a rural "sovereign nation" in Indian Country), should not be included in the Phoenix-Mesa C/MSA when it has no measurable impact to the adjoining Pinal County air shed or to the Phoenix-Mesa air shed. The Community is reluctant to consider a designation of either "unclassifiable" or "non-attainment". Any designation other than "attainment" could impact present and future development and have a significant financial impact on the Community.

As with other federal agencies, the U.S. Environmental Protection Agency has a federal trust responsibility to federally-recognized tribes, which requires that the Agency consult with and consider the interests of tribes when taking actions that may affect tribal rights or trust resources. This trust responsibility is separate and apart from the requirements of the Clean Air Act (CCA) §107(d) designation process and has been consistently reaffirmed by the courts, executive orders and agency issued statements of policy that recognized the importance of tribal governments in regulatory activities that impact reservation environments. The keynote of this policy for the Ak-Chin Indian Community is the belief that EPA will "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".

If a Tribal Implementation Plan (TIP) is the subsequent result of a designation other than "attainment", additional economic stressors will be unfairly placed on the Ak-Chin Indian Community. As you know, monitoring would have to be put in place to document levels of emissions, and other pollutants. Currently, there is no financial support from EPA to develop new air monitoring programs in Region IX Indian Country.

Since the Ak-Chin Reservation has historically been classified as "attainment", and because no significant changes to its air shed have occurred to date and are not anticipated to change in the foreseeable future, the Ak-Chin Indian Community strongly feels that it is not appropriate to use the umbrella of the Phoenix - Mesa C/MSA as the criteria to determine a designation other than "attainment" for the Ak-Chin Indian Reservation.

The Community believes in it's sovereignty and will continue to protect human health and the environment within the external boundaries of the Ak-Chin Indian Reservation. This is being done voluntarily, without regulations imposed by outside agencies, or by the use of the Phoenix - Mesa C/MSA. The Ak-Chin Community also believes that C/MSAs are based on economic structures that tribes are not part of, and therefore a ruling to designate the Ak-Chin Reservation anything but "attainment" would be arbitrary and capricious.

Consider that the Phoenix - Mesa C/MSA non-attainment designation for 8-hr ozone (i.e., mapped to include the Ak-Chin Reservation) was defined by the Office of Management and Budget based on information supplied by the U.S. Department of Commerce, Bureau of the Census, without consulting with the Ak-Chin Indian Community or Pinal County for input while the C/MSA was drafted. Furthermore, direct economic harm could result from a designation of either "unclassifiable" or "non-attainment", impacting the Ak-Chin Indian Community for years to come.

Therefore, a recommendation to retain the ACIC designation of "attainment" is supported by the Ak-Chin Indian Community for the revised NAAQS. The Community would willingly support C/MSA reassessment and/or reduction of area encompassed by the Phoenix - Mesa C/MSA.

As a result of the potential impact an unfavorable designation would have on the Reservation, the Ak-Chin Indian Community is currently negotiating with EPA, Region IX to enter into a cooperative agreement to fund initial development of an Air Quality Monitoring Program. Since there is currently no specific funding available from EPA to develop an air monitoring program, it is hoped that Region IX's Indian Program Office can provide funding assistance through it's General Assistance Program (GAP) grant so ACIC can hire an Air Quality Specialist to conduct an air emissions inventory and subsequently develop a monitoring program within the boundaries of the Reservation.

A Tribal Environmental Plan (TEP) between the EPA Region IX and the Ak-Chin Indian Community was completed in August 2000. After review, the TEP was signed by the Ak-Chin Tribal Council Chairman and forward to EPA Region IX for Administrator signature. Administrator signature would indicate acceptance of the Ak-Chin's proposed TEP cooperative agreement with EPA Region IX. Completion and submittal of a TEP to EPA was a requirement imposed by EPA on GAP grant recipients at that time. It is now nearly three years since ACIC submitted it's TEP. The Community is still patiently waiting for a response from the EPA Region IX.

As you can see from Ak-Chin's wish to work cooperatively with the EPA, that the Community continues to pursue it's sovereignty in an effort to steward the Ak-Chin Indian Reservation responsibly into the future, while protecting human health and the environment.

Ak-Chin Indian Community
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In closing, the ACIC is deeply concerned that, despite the 11 eleven mitigating factors, the Guidance still assumes that tribal lands within an MSA or C/MSA (that has a violating monitor) should be classified as non-attainment. As voiced by other tribes as well, the Guidance puts the burden on the tribe to make a case for exclusion and actually places Tribes under the "de facto" air quality jurisdiction of the surrounding state.

The Ak-Chin Indian Community agrees with common concern throughout Indian Country, that the assumption should be that tribes, being separate jurisdictions, are in attainment, unless data shows otherwise. Because of political subdivisions (counties) that do not relate to Tribal boundaries or jurisdiction, the Guidance seems to assume that the Ak-Chin Indian Community as well as other communities within the Phoenix-Mesa C/MSA will now and forever be non-attainment ONLY because of the non-attainment 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.

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. However, the 8-hour ozone Guidance seems to take away what the TAR seemed to provide, i.e., a way for tribes to fully participate in the Clean Air Act and to manage their own air quality. To designate the ACIC "non-attainment" for ozone imposes the burden of non-attainment on the Community without the authority to do anything about that status.

The Ak-Chin Indian Community hopes that you will find our recommendation to Ms. Felicia Marcus, former Regional Administrator (letter dated September 25, 2000) and this additional letter persuasive, and that you designate ACIC lands as attainment for the 8-hour ozone NAAQS. We feel this recommendation is fully consistent with the Clean Air Act, i.e., CAA §107(d)(1).

If you have questions about this letter or need more information, please contact Patrick Trusty, M.T., Director of the ACIC Environmental Protection Department at (520) 568-1158.

Respectively Submitted,

Terry O. Enos

Terry O. Enos, Chairman

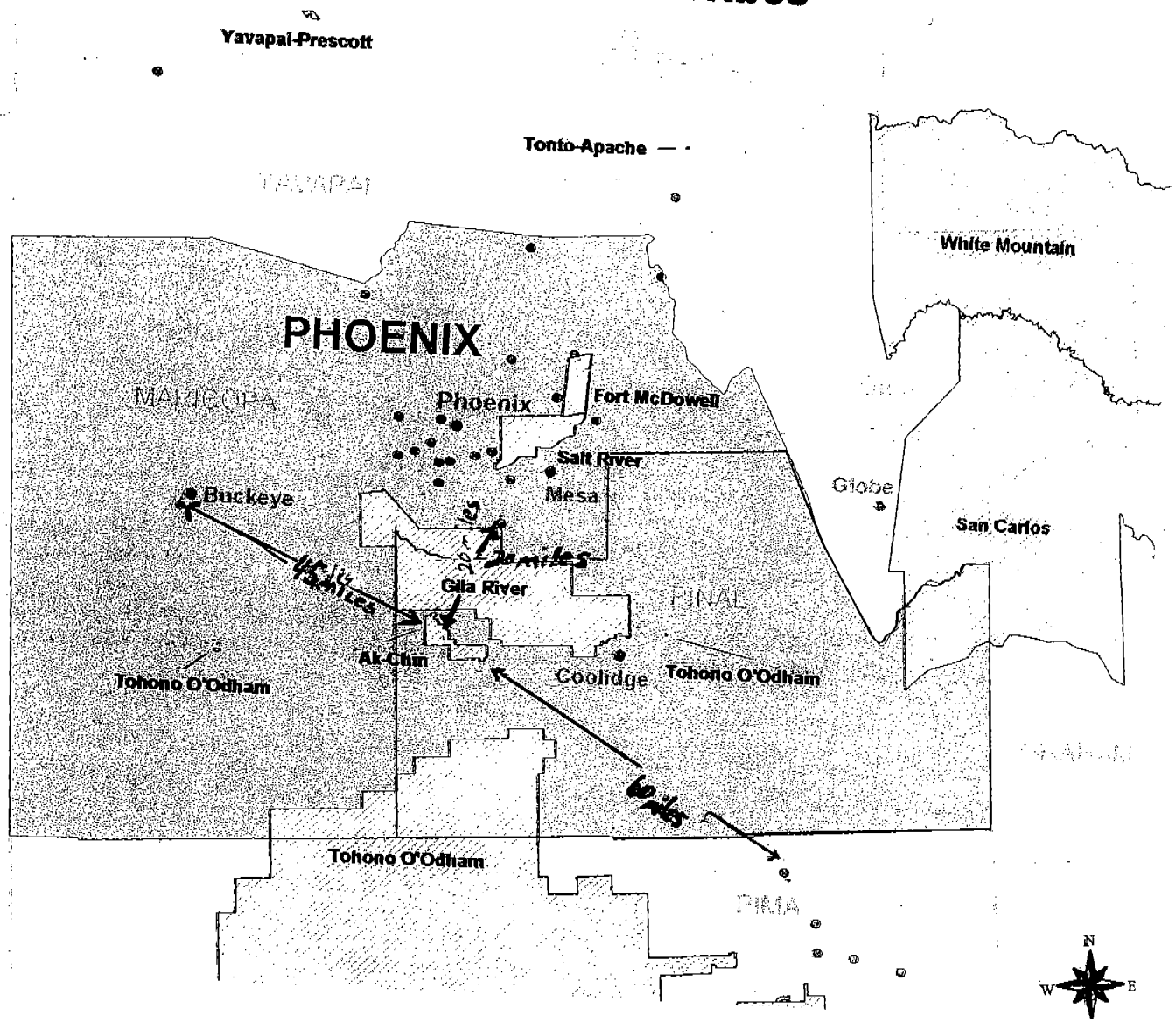
07-09-03

Date

Copy: Delia Carlyle, Vice Chairman; Tom White, Community Operations Manager; Patrick Trusty, Environmental Protection Director

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

COUNTY

- City

30 0 30 Miles

US EPA Region 9, Air Div. DG

August 2000