Fort McDowell Yavapai Nation

P.O. Box 17779, Fountain Hills, AZ 85269 Phone (480) 837-5121 Fax (480) 837-1630

President Dr. Clinton M. Pattea **Vice President** Robin Russell **Treasurer** Larry Doka
Council Member Gwen Bahe **Council Member** Benedict Smith, Sr.

July 14, 2003

Wayne Nastri
Regional Administrator
U.S. Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: Supplement to the Fort McDowell Yavapai Nation's Recommended Area Designation for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

The Fort McDowell Yavapai Nation appreciates the opportunity to submit this supplement to our previous recommendation regarding the area designations for the 8-Hour Ozone Standard. The Fort McDowell Yavapai Nation ("FMYN" or "Nation") submitted a letter to Environmental Protection Agency (EPA) Region IX regarding the designations on October 30, 2000 (attached).

The October 30, 2000, letter recommended that the area within the exterior boundaries of the FMYN to be designated as UNCLASSIFIABLE for the 8-hour ozone standard. The Tribal Guidance Document issued by John Seitz, Director of EPA's Office of Air Quality Planning and Standards, on July 18, 2000, described a process for tribes to follow when making a designation recommendation. The guidance states that metropolitan statistical areas (MSA's) with violating monitors are presumed to be nonattainment for the 8-hour ozone standard. However, the guidance does list 11 mitigating factors that will be considered by EPA in determining whether a Tribal Nation that is located partially or entirely within a nonattainment MSA should be excluded from the nonattainment designation area. The Nation's October 30, 2000, letter attempted to address each of the 11 mitigating factors and this letter will expand on that information. The information contained in this letter will further support an UNCLASSIFIABLE designation for the 8-hour ozone standard for the FMYN.

Now that the legal challenges regarding the 8-hour ozone standard and its implementation have been resolved, EPA has once again asked tribes and states to submit designation recommendations for lands within their respective jurisdictions. The Nation appreciates this opportunity and requests that the EPA accept this letter and attached documents as a supplement to the previous FMYN designation recommendation. Please review this letter (and attachments) in conjunction with the Nation's October 30, 2000, both of which support the UNCLASSIFIABLE designation recommendation.

Background:

The FMYN is a federally recognized Indian Tribe located northeast of the Phoenix metropolitan area in central Arizona. The Nation's land base consists of 25, 000 acres of trust land. There are approximately 900 Tribal members, however not all members reside within the boundaries of the FMYN. Despite the close proximity of the Nation to the Phoenix metro area the industrial and urban development within the Nation is extremely limited. The Nation operates a casino, a limited sand & gravel operation and one gas station. Therefore the sources of air pollution within the exterior boundaries of the FMYN are extremely limited and the Nation has always been mindful

of restricting the development of significant sources of air pollution, which is reflected in the types of sources that currently exist on the reservation.

The Nation has been concerned about air pollution that drifts in from the Phoenix area for many years. Several years ago the Nation determined that an air quality program was needed to monitor air pollution concentrations and to work with EPA and neighboring jurisdictions to collectively address air pollution problems. The Nation received funding from EPA Region IX to establish an air quality program which has recently begun monitoring for ozone and particulate matter.

With regard to the Nation being included in the nonattainment area for the one-hour ozone standard the Nation's long-standing position has been that the Nation was incorrectly and erroneously included in the Maricopa Association of Governments (MAG) Urban Planning Area nonattainment areas. The Nation maintains that this occurred due to EPA's failure to adequately consult with the Nation during the CAA §107(d) designation process in accordance with the Agency's federal trust responsibility.

The Nation's air quality program has participated in several local and regional air quality initiatives in an effort to improve the air quality conditions in and around Fort McDowell. The FMYN actively participated in the National Tribal Designations and Implementations Work Group and assisted with the development of the products completed by the group. Again and again Tribal Nations across the county had issues with the use of MSA's as presumptive boundaries. This remains to be an issue that the Nation and other Tribal Governments would like EPA to re-examine.

The Nation and other Tribal Governments in Arizona have worked closely with the Arizona Department of Environmental Quality (ADEQ) as the state developed their boundary recommendation regarding the 8-hour ozone standard. While the state's boundary recommendation for the nonattainment area may or may not contain tribal lands, the Nation maintains that the designation of tribal lands is strictly between the U.S. EPA and the respective Tribal Government-not the state of Arizona.

In an effort to support the Fort McDowell Yavapai Nation's recommendation to designate the Nation as UNCLASSIFIABLE the Nation has developed responses to the 11 mitigating factors described in the Tribal Guidance Document issued on July 18, 2000, which are listed below.

FMYN's Response to Eleven Mitigating Factors:

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

The Fort McDowell Yavapai Nation is located in the northeastern portion of Maricopa County, AZ. Past research has indicated the Nation was included in the Maricopa County nonattainment area in the 1970's without any notification, consultation or input from the Nation. The boundaries were based on the Maricopa Association of Governments' (MAG) Urban Planning Area. This area included FMYN despite the fact that the FMYN's development was and still is minimal, especially when compared to that of the Phoenix metro area. While population and industrial development have increased dramatically in the Phoenix area since the 1970's, the FMYN has not experienced the same growth. As a result of the vast increase in vehicle miles traveled and increased industrial activity due to population growth in the Phoenix area, air pollution has become a major concern. The growth in Phoenix has produced air pollution problems. Since the 1970's significant development at Fort McDowell has not occurred. Additionally, there has never been a monitored exceedance for any criteria pollutant within the exterior boundaries of the FMYN.

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

According to 2000 Department of Economic Security data nearly 3 Million people reside in Maricopa County with more than 256,929 people employed in industrial related occupations. These numbers are expected to rise annually since the Phoenix metro area experiences migration of several hundred thousand people annually. By contrast, the FMYN has an on-reservation population of less than one thousand and the total development of the Nation consists of a casino, a limited sand & gravel operation and a gas station. The majority of tribal members work on the reservation for the Tribal government of for one of the enterprises.

According to OMB reports, MSA's are core area containing a large center of population, together with adjacent communities having a high degree of economic and social integration with that core. MSA's generally include an urban core and its suburbs. However, it is obvious that Tribal Nations are not suburbs of the urban core, Phoenix in this case. The Fort McDowell Yavapai Nation and other Indian Communities near the Phoenix are clearly not socially or economically integrated with Phoenix or its suburbs, despite their fairly close physical proximity. In fact, the lack of integration with neighboring communities poses one of the most challenging economic issues for Tribes in Arizona and nationally. Although, many of the patrons that visit the Nation's casino travel to Fort McDowell from off-reservation communities the FMYN and other local Tribes are still not socially or economically integrated with the Phoenix metropolitan area. Since Tribal Governments are not political subdivisions of the state the tribes do not benefit from state revenue sharing from state or local taxes and the Tribes generally provide their own typical governmental services (transportation, law enforcement, fire, etc.) with their own tribal resources. This clearly demonstrates the lack of social and economic integration of the Nation with the city of Phoenix and its suburbs.

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

The Nation's monitoring program began collecting ambient data for the one-hour and 8-hour ozone NAAQS in January 2002. Concentrations measured thus far have not indicated an exceedance, much less a violation, of the standard at Fort McDowell. Despite the atmospheric conditions during the summer of 2002 that were quite conducive to the formation of ozone there still were not any measured exceedances at Fort McDowell.

The monitoring data collected thus far further supports the Nation's position that the Fort McDowell Yavapai Nation should be designated as unclassifiable until the Nation is able to collect three years of QA/QC approved data, which would enable EPA to make a proper designation based on ozone concentrations at Fort McDowell. It is important to restate that the FMYN does not have the sources of precursors that create ozone. Any and all ozone that may be measured at Fort McDowell is generated in the Phoenix area. Since FMYN does not have three years of QA/QC approved data and there has been no modeling conducted that would represent ozone concentrations averaged over three years, the only basis for designations should be based on actual monitoring data. Furthermore, since the Fort McDowell Yavapai Nation is a sovereign nation with distinct jurisdictional and legal separation from the state of Arizona and its political subdivisions the only data that should be utilized to designate the Nation should be data collected within the exterior boundaries of the FMYN.

4. Location of emissions sources

As previously noted, the FMYN has very little urban development. Significant sources of ozone precursors are not located at FMYN. In no way does the FMYN and its sources contribute to the ozone problem in the Maricopa County area.

5. Traffic and commuting patterns

The FMYN is bisected by AZ State Highway 87 (Beeline Highway). Approximately 5 miles of Highway 87 is within the exterior boundaries of the FMYN. Very few of the vehicles that travel along Highway 87 are from FMYN. As previously noted, most tribal members reside and are employed on the reservation. Traffic to and from the FMYN's casino is reduced by the number of shuttle buses that the casino operates, which reduces the number of single drivers visiting the casino. The Nation is also considering converting the casino buses to alternative fuels, which would further reduce the precursors of ozone emitted from mobile sources traveling to and from the casino.

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

The FMYN does not expect an increase in population aside from natural growth among tribal members. There are less than one thousand tribal members enrolled with the FMYN. Not all tribal members reside on the reservation, but the majority do. Tribal members that do not currently reside on the reservation are typically away attending school or pursuing employment opportunities. The political differences between the FMYN and Maricopa County are distinct and illustrate that while population growth undoubtedly occur in Maricopa County there will not be a population increase at FMYN.

7. Meteorology (weather/transport patterns)

The FMYN is situated in the northeastern portion of Maricopa County. It is true that prevailing wind patterns in the Phoenix area are from the west to the east and northeast. By simply noting the wind patterns and with the knowledge that the precursors of ozone are generated in the Phoenix area and react in the presence of heat and sunlight one might conclude that ozone levels at FMYN would be elevated. However, the Nation's position is that as a sovereign Tribal Government, the Nation should have the opportunity to collect data within its jurisdiction to 1) adequately assess the quality of air that tribal members are exposed to and 2) to provide the appropriate data by which EPA can make a designation regarding the 8-hour ozone standard. The Nation firmly believes that if in fact pollution is generated in Phoenix and is being transported to Fort McDowell, the state of Arizona and its political subdivisions should be held accountable and should be the responsible parties for rectifying the situation. Under no circumstances should the FMYN be penalized by being placed in a nonattainment area simply because a large metropolitan area was developed over time adjacent to the FMYN.

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

The FMYN is located in a small valley and is bisected by the Verde River. There are no significant mountain ranges to speak of, with the exception on Red Mountain which is just southwest of the Nation.

9. Jurisdictional boundaries

The jurisdictional boundaries of the FMYN are clearly defined and not in question. There are no fee-lands or other complicating issues associated with the land within the exterior boundaries of the FMYN. The land to the south of the FMYN is occupied by the Salt River Pima-Maricopa Indian Community, directly to the west is the town of Fountain Hills, to the north is the town of Rio Verde, and to the east is the Tonto National Forest.

10. Levels of control of emission sources

As previously stated, there are no significant sources of ozone precursors within the jurisdiction of the FMYN; therefore there are no levels of control to speak of. The Nation is however, quite conscious of sustainable development and ensures that all tribal projects take into consideration their impact on human health and the impact to the natural environment, both of which have great importance in the traditional and current tribal practices.

11. Regional emission reductions impacts

Any emissions of the precursors to ozone from all current and potential future sources located within the jurisdiction of the FMYN are so minor that they do not impact the NAAQS on a local or regional basis. However, the FMYN is interested in regional efforts and has regularly participated in regional air quality initiatives such as the Western Regional Air Partnership (WRAP). The FMYN Air Quality Specialist is the current co-chair of the WRAP's Tribal Data Development Working Group and is one of two tribal representatives on the Technical Oversight Committee. The FMYN also supports and participates with other jurisdictions to develop regional approaches to addressing air pollution problems.

It is important to restate that under no circumstances should the Fort McDowell Yavapai Nation be given a nonattainment designation without three years of data collected within the exterior boundaries of the FMYN. In addition, in the event that measured concentrations of ozone at FMYN do exceed the NAAQS the responsibility for attaining the NAAQS has to be imposed on the state of Arizona, not the FMYN, since all of the sources of the precursors of ozone are located outside of the boundaries of the FMYN. The Nation would like to echo its deep concern for protecting human health and respectfully remind the EPA that FMYN has not created any ozone (or other pollution) problems and therefore should not be penalized for the actions or inactions of other jurisdictions for which the Nation has no control over. The Fort McDowell Yavapai Nation is highly committed to working in partnership with EPA to find innovative strategies for protecting human health and the environment at Fort McDowell. We are hopeful that the EPA will find that our recommendation to classify the FMYN as UNCLASSIFIABLE for the 8-hour ozone NAAQS to be based on sound legal, technical, and practical information. The Nation is confident that this recommendation is fully consistent with §107(d)(1) of the CAA. If you have any questions regarding this letter please contact Ondrea Barber, FMYN Air Quality Specialist, at (480) 816-7208.

Sincerely,

Dr. Clinton M. Pattea
Tribal Council President

Cc: FMYN Council Members
Steve Page, OAQPS
Jack Broadbent, EPA Region IX
Darrel Harmon, USEPA OAR
Doug McDaniel, EPA Region IX
Clancy Tenley, EPA Region IX
John R. Lewis, ITCA

Fort McDowell Yavapai Nation
Environmental Department
P.O. Box 17779
Fountain Hills, AZ 85269-7779

PHOENIX AZ 85016
PM
16 JUL 2003

Barhite

Mr. Jack Broadbent
US EPA - Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

94105-3901