

The Volkswagen Diesel Emissions Environmental Mitigation Trust

for Indian Tribe Beneficiaries

Notice of Filing by The United States Requesting Approval of Proposed Material Modification of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries in accordance with Subparagraph 6.5 of the Indian Tribe Trust

Dated: August 27, 2018

Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”) hereby gives notice that the United States filed a Notice Requesting Approval of the Proposed Material Modification of the Indian Tribe Trust which resulted from the process conducted by the U.S. Department of Justice, Office of Tribal Justice (“OTJ”) as required by the Order of the U.S. District Court for the Northern District of California (the “Court”) dated March 2, 2018 (the “Order”). A copy of which is attached hereto.

The United States filed Notice of the Proposed Material Modification to the Indian Tribe Trust on June 21, 2018 (the “Notice of a Proposed Material Modification to the Indian Tribe Trust”) and had lodged a copy of the Proposed Modification to the Indian Tribe Trust with the Court. A copy of the United States Notice of a Proposed Material Modification to the Indian Tribe Trust is attached hereto.

Pursuant to subparagraph 6.5 of the Indian Tribe Trust, the Trustee was required to provide to the Beneficiaries not less than 30 Days’ notice of any proposed modification to the Indian Tribe Trust, whether material or minor. The Trustee provided said notice on June 21, 2018. The Trustee’s 30 Days’ notice period has elapsed and a copy of that notice is attached hereto.

On June 25, 2018, the OTJ sent a letter to tribal leaders informing them that the United States would accept written comments from Beneficiaries and potential Beneficiaries of the Indian Tribe Trust regarding proposed modifications until July 23, 2018. The United States’ comment period has expired and a copy of that letter is attached hereto.

On August 14, 2018 The United States filed its Notice of United States’ Consent To Modifications to Indian Tribe Trust and Memorandum In Support of its Request For Court Approval of Modifications. A copy of the United States’ filing is attached hereto.

Currently, the matter is awaiting action by the Court and the Trustee remains under the stay imposed by the March 2, 2018 Order.

BY: Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries

DATE: August 27, 2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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| IN RE: VOLKSWAGEN “CLEAN DIESEL” MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION |) | MDL No. 2672 CRB (JSC) |
| |) | |
| |) | ORDER STAYING CERTAIN TRUSTEE |
| |) | OBLIGATIONS UNDER THE |
| |) | ENVIRONMENTAL MITIGATION TRUST |
| This Document Relates to: |) | AGREEMENT FOR INDIAN TRIBE |
| |) | BENEFICIARIES |
| <i>United States v. Volkswagen AG et al.</i> , Case No. 16-cv-295 (N.D. Cal.) |) | |
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1 Having reviewed and considered information received from the United States and the parties to
2 the Indian Tribe Trust Agreement, the Court hereby:

- 3 1) **ORDERS** the United States and interested Beneficiaries to meet and confer, in consultation
4 with the Trustee, to discuss whether any adjustment to the allocation methodology applicable
5 when approvable funding requests from Beneficiaries exceed available funding is necessary
6 to ensure that the Indian Tribe Trust funds are distributed in a manner that is consistent with
7 the purpose of the Indian Tribe Trust;
- 8 2) **ORDERS** that within 60 days of this Order, the United States shall file a status report to the
9 Court, unless the United States instead files a proposed modification to the Indian Tribe Trust
10 Agreement for the Court's consideration; and
- 11 3) **ORDERS** that the Trustee shall take no further actions related to its obligations under
12 Section V (Distribution of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust
13 Agreement, including without limitation, its obligations under subparagraph 5.0.5 (and all the
14 subparagraphs thereof), and Paragraphs 5.1, 5.2 (and all the subparagraphs thereof), 5.3, and
15 5.4, as they relate to the first funding cycle and all future funding cycles under the Indian
16 Tribe Trust, until ordered by the Court to do so.

17 **IT IS SO ORDERED.**

18 Dated: March 2, 2018



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20 CHARLES R. BREYER
United States District Judge

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

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16 IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 CRB (JSC)
17 MARKETING, SALES PRACTICES, AND)
18 PRODUCTS LIABILITY LITIGATION) **UNITED STATES’ NOTICE OF PROPOSED**
19) **MATERIAL MODIFICATIONS TO INDIAN**
20) **TRIBE TRUST AGREEMENT**

21 This Document Relates to:)
22)
23 *United States v. Volkswagen AG et al.*,)
24 Case No. 16-cv-295 (N.D. Cal.))
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1 Pursuant to Paragraph 6.5 of the Environmental Mitigation Trust Agreement for Indian Tribe
 2 Beneficiaries (“Trust Agreement”), Dkt. No. 51-2 at 37,¹ which was approved by the Court on
 3 September 19, 2017, Dkt. No. 49, the United States notifies this Court that proposed material
 4 modifications to the Trust Agreement are attached to this Notice. Before any modification may become
 5 effective, the Trustee, Wilmington Trust, N.A., must provide to the Beneficiaries not less than 30 days’
 6 notice of any proposed modification. Trust Agreement, ¶6.5. In addition, material modifications to the
 7 Trust Agreement may be made only with the written consent of the United States and upon Order of the
 8 Court. *Id.* The United States will accept written comments from Beneficiaries and potential
 9 Beneficiaries on the proposed modifications to the Trust Agreement for a period of 30 days after the
 10 Trustee has provided notice to the Beneficiaries pursuant to Paragraph 6.5 of the Trust Agreement. At
 11 the conclusion of the comment period, the United States will advise the Court regarding any further
 12 action that may be required at that time. During the pendency of the United States’ comment period and
 13 the Trustee’s notice period under Paragraph 6.5, no action is required of the Court.

14 Dated: June 21, 2018

Respectfully submitted,

For the United States of America

BRUCE S. GELBER
 DEPUTY ASSISTANT ATTORNEY GENERAL

By: /s/ Robert D. Mullaney
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27 ¹ In this Notice, all page references to a Court document are to those pages in the header of the Court
 28 document (e.g., page 37 of 80).

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ATTACHMENT A
Proposed Modifications to
Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

**ENVIRONMENTAL MITIGATION TRUST AGREEMENT
FOR INDIAN TRIBE BENEFICIARIES**
(as modified on June **, 2018)

On October 25, 2016, the Court entered a Partial Consent Decree (“First Partial Consent Decree”) in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the “Settling Defendants”), the United States, and the State of California. In that case, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the “Defendants”), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the “Trustee”): (1) hereby enter into this Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the “Indian Tribe Trust Agreement”) and establish the environmental mitigation trust described in that agreement (“Indian Tribe Mitigation Trust” or “Indian Tribe Trust”); and (2) concurrently enter into a separate Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the “State Trust Agreement”) and establish the environmental mitigation trust described in that agreement (the “State Mitigation Trust” or “State Trust”). The Defendants and the Trustee acknowledge that the purpose of the Indian Tribe Mitigation Trust and the State Mitigation Trust is to fulfill the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the Indian Tribe Mitigation Trust and the State Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the Indian Tribe Mitigation Trust and the State Mitigation Trust. The Indian Tribe Mitigation Trust and the State Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the First Partial Consent Decree and the Second Partial Consent Decree (jointly, the “Consent Decree”), and in accordance with the following allocation: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.01% to the Indian Tribe Mitigation Trust; and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.3% to the Indian Tribe Mitigation Trust.

PURPOSE AND RECITALS

Whereas, the Defendants are required to establish this Indian Tribe Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) where the Subject Vehicles were, are, or will be operated (“Eligible Mitigation Actions”), and to pay for Trust Administration Costs as set forth in this Indian Tribe Trust Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe Trust Agreement and the State Trust Agreement is intended to fully mitigate the total, lifetime

excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated;

Whereas, the Defendants hereby establish this Indian Tribe Mitigation Trust to provide funds for Eligible Mitigation Actions and Trust Administration Costs;

Whereas, the Trustee has been selected to be the trustee under this Indian Tribe Trust Agreement in accordance with the requirements set forth in the First Partial Consent Decree; ~~and~~

Whereas, the Trustee is willing to act as trustee in accordance with the terms of this Indian Tribe Trust Agreement;

[Whereas, on June **, 2018, the Defendants and the Trustee agreed to certain material modifications to the Indian Tribe Trust Agreement that are reflected herein;](#)

[Whereas, the United States will lodge the modified Indian Tribe Trust Agreement with the Court and will accept comments from interested Indian Tribes for a 30-day period after lodging; and](#)

[Whereas, after the comment period, the United States will either file a motion requesting the Court to approve the modifications in accordance with Paragraph 6.5 or seek other relief from the Court;](#)

Now, therefore, the Defendants and the Trustee agree as follows:

I. DEFINITIONS

1.0 Unless otherwise defined in this Indian Tribe Trust Agreement, all capitalized terms used herein shall have the meaning set forth in the Consent Decree.

[1.1 “2010 United States Census Table PCT4” shall mean Table PCT4 \(entitled “American Indian and Alaska Native Alone or in Combination with One or More Other Races”\) of the United States national census conducted by the U.S. Census Bureau in 2010.](#)

~~1.1~~[1.2 “Beneficiary” shall mean each Indian Tribe determined to be a Beneficiary pursuant to Section IV \(Indian Tribe Mitigation Trust Beneficiaries\) and subparagraphs 2.1.2 and 5.0.5.](#)

[1.3 “Beneficiary Status Certification Form” shall mean the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form that is attached as Appendix D-3 to this Indian Tribe Trust Agreement.](#)

~~1.2~~[1.4 “Business Day” means, with respect to any delivery requirement, deadline, or payment under this Indian Tribe Trust Agreement, each Monday, Tuesday, Wednesday, Thursday, and Friday that is not a day on which the Trustee in the State of Delaware or, as to a specific Beneficiary, a day on which that Beneficiary under this Indian Tribe Trust is authorized or obligated by law, regulation, or executive order to close.](#)

~~1.3~~1.5 “Claims” shall mean any and all losses, liabilities, claims, actions, suits, or expenses, of any nature whatsoever, including legal fees and expenses.

~~1.4~~1.6 “Consent Decree” shall mean the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

~~1.5~~1.7 “Court” shall mean the United States District Court for the Northern District of California.

1.8 “Court’s Approval Order” shall mean the Court’s Order dated _____, 2018, approving the modifications to the Indian Tribe Trust Agreement in this matter. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. ____.

~~1.6~~1.9 “Day” shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Indian Tribe Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal or Delaware holiday, the period shall run to the close of business of the next Business Day;

~~1.7~~1.10 “Delaware Act” shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

~~1.8~~1.11 “DERA” shall mean the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. §§ 16131-16139).

~~1.9~~1.12 “Eligible Mitigation Action” shall mean any of the actions listed in Appendix D-2 ([Eligible Mitigation Actions and Mitigation Action Expenditures](#)) to this Indian Tribe Trust Agreement.

~~1.10~~1.13 “Eligible Mitigation Action Administrative Expenditure” shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 ([Eligible Mitigation Actions and Mitigation Action Expenditures](#)) to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

1.14 “EMA Certification Form” shall mean the [Beneficiary Eligible Mitigation Action Certification form that is attached as Appendix D-4 to this Indian Tribe Trust Agreement](#).

~~1.11~~1.15 “Federal Agency” shall mean any agency of the United States government.

~~1.12~~1.16 “First Partial Consent Decree” shall mean the Partial Consent Decree entered by the Court in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), on October 25, 2016.

~~1.13~~1.17 “Force Majeure” shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

~~1.14~~1.18 “Indian Land” shall mean the lands of any Indian Tribe or within Indian country.

~~1.15~~1.19 “Indian Tribe” shall mean any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe, as provided in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally ~~acknowledged~~recognized Indian Tribes at ~~8283~~8283 Fed. Reg. ~~4,915~~235 (Jan. ~~17, 2017~~30, 2018), which will be updated from time to time.

1.20 “Indian Tribe Trust Agreement” shall mean the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries approved by the Court on September 19, 2017, United States v. Volkswagen AG, et al., No. 16-cv-295 (N.D. Cal.), Dkt. No. 49, the modifications thereto as approved by the Court’s Approval Order, and the fully executed version filed with the Court on the Trust Modification Effective Date.

~~1.16~~1.21 “Investment Manager” shall mean Wilmington Trust, N.A., acting solely in its role as the professional investment manager of Trust Assets in accordance with subparagraph 3.2.2 of this Indian Tribe Trust Agreement and the Investment Management Agreement entered into on the Trust Effective Date. In subparagraphs 2.2.4, 3.1.2.8, 3.5.3 (last sentence), 3.5.6, and 3.5.7 of the Indian Tribe Trust Agreement, each reference to the Investment Manager shall include the Investment Manager and its officers, directors, and employees.

~~1.17~~1.22 “IRS” shall mean the Internal Revenue Service.

1.23 “Second Partial Consent Decree” shall mean the Second Partial Consent Decree entered by the Court in In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC) (Dkt. No. 3228-1), on May 17, 2017.

~~1.18~~1.24 “Shared State and Indian Tribe Administration Costs” shall mean the costs, fees, and expenses of: (1) establishing and maintaining the Trustee’s public-facing website; and (2) establishing and maintaining a secure method of internet-based communication for the Trustee and Beneficiaries.

~~1.19~~1.25 “Start-up Costs” shall mean all fees, costs, and expenses incurred in connection with establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust and setting them up for operation. Start-up costs shall not include the cost of premiums for insurance policies.

~~1.20~~1.26 “Subject Vehicles” shall mean: (i) the “2.0 Liter Subject Vehicles,” as defined in the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1); and (ii) the “3.0 Liter Subject Vehicles,” as defined in the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

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Trustee is hereby authorized and directed to execute and file a Certificate of Trust for the Indian Tribe Mitigation Trust in the form attached hereto as Appendix D-5. The Trustee hereby accepts and agrees to hold the assets owned by the Indian Tribe Mitigation Trust (“Trust Assets”) for the benefit of the Beneficiaries and for the purposes described herein and in the Consent Decree.

2.0.2 Trustee. In accordance with Paragraph 3.0 below, on the Trust Effective Date, the Trustee, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee in accordance with the Consent Decree to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Indian Tribe Mitigation Trust to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Indian Tribe Trust Agreement, and to provide funds for the administration and operation of this Indian Tribe Trust in accordance with this Indian Tribe Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

2.0.4 Creation and Use of Indian Tribe Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account (“Indian Tribe Trust Account”), and file with the Court a designation and identification of the Indian Tribe Trust Account. The purpose of the Indian Tribe Trust Account shall be to receive deposits from the Defendants (directly or through the Court Registry) pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, to hold them in trust, to receive income and gains from any investment of Trust Assets (collectively, “Trust Funds”), and to make disbursements to fund Eligible Mitigation Actions by Beneficiaries and to pay Trust Administration Costs, all in accordance with the Consent Decree and this Indian Tribe Trust Agreement. Disbursements shall be directed by each Beneficiary pursuant to a Beneficiary Eligible Mitigation Action Certification [form \(“EMA Certification Form”\)](#) (Appendix D-4) delivered to the Trustee in accordance with Paragraph 5.2. Unless otherwise agreed by the parties to the Consent Decree (“Consent Decree Parties”), the Indian Tribe Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Indian Tribe Trust Account Divisions. The Indian Tribe Trust Account may be divided into such number of discrete trust subaccounts dedicated for specific purposes as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and to implement, the Consent Decree and this Indian Tribe Trust Agreement.

2.1 Funding of the Indian Tribe Mitigation Trust: The Settling Defendants shall fund the Indian Tribe Mitigation Trust as required by the First Partial Consent Decree, and the Defendants shall fund the Indian Tribe Mitigation Trust as required by the Second Partial Consent Decree. The Trustee shall allocate to the Indian Tribe Mitigation Trust the following amounts: (1) 2.01% of the Mitigation Trust Payments from the First Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account, and (2) 2.3% of the

Mitigation Trust Payments from the Second Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Indian Tribe Trust Account the funds allocated to the Tribal Allocation Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for a technical assistance provider in accordance with subparagraph 2.1.1.1. After lodging the First Partial Consent Decree, the United States consulted with interested Indian Tribes for a 60-Day period, ~~(“Consultation Process”)~~, in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those Indian Tribes that are deemed Beneficiaries hereunder, including setting aside 5% of those funds to be directed towards technical assistance to enable Indian Tribes to prepare funding requests for Eligible Mitigation Actions.

2.1.1.1 Technical Assistance Provider. In comments received during the ~~consultation process~~ Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference for using an established technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions. Accordingly, the Trustee agrees ~~to~~: (1) to set aside 5% of the Tribal Allocation Subaccount into a separate subaccount, the Technical Assistance Provider Subaccount, for record keeping purposes only, to be disbursed to a technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions; and (2) consistent with comments received from Indian Tribes during the Consultation Process, to select the Institute for Tribal Environmental Professionals as the technical assistance provider for these purposes. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any budget, ~~semi-annual~~ semiannual report, or other document from the technical assistance provider reasonably believed by the Trustee to be genuine and to have been signed or sent by the proper person or persons.

2.1.1.2 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form (“Beneficiary Status Certification Form”) (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request

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missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider's review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

2.1.1.2.1.1.3 **Budget.** In order to fund its services, the technical assistance provider shall submit ~~an annual budget~~ to the Trustee, in electronic and hard-copy ~~format~~ formats, an annual budget for its services in each year. The annual budget shall be submitted 45 Days before the commencement of the applicable budget period for review by the Trustee, and shall include: (i) a detailed description of the proposed services described above in subparagraph 2.1.1.2; (ii) a proposed management plan for the proposed services, including a detailed budget for proposed expenses for the upcoming year, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.34; (iv) a certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable; (v) for each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors; (vi) a detailed description of how the technical services provider will oversee the proposed services, including, but not limited to: identification of the specific entity responsible for reviewing and auditing expenditures of funds to ensure compliance with applicable law; and a commitment by the technical assistance provider to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the technical assistance provider shall make such documentation publicly available; and (vii) a detailed plan for reporting on implementation that meets the requirements of subparagraph 2.1.1.4.5. The technical assistance provider shall provide additional information as requested by the Trustee. The Trustee shall post each

proposed annual budget on the Indian Tribe Trust's public-facing website upon receipt. The Trustee must approve the annual budget for the technical assistance provider's services before disbursing funds for the budget.

Pursuant to the procedures and schedules in subparagraphs 5.2.16 and 5.2.16.1, the Trustee shall approve any funding request in the technical assistance provider's budget that meets the requirements of this subparagraph 2.1.1.23, and shall disburse funds according to the written instructions provided by the technical assistance provider. In connection with a modification of this Indian Tribe Trust Agreement, the technical assistance provider may revise its initial budget to take into account factors including the scope of tasks listed in subparagraph 2.1.1.2 and the reduction in the number of funding cycles in subparagraph 5.0.5.2.

2.1.1.32.1.1.4 **Limits on Indirect Costs.** The technical assistance provider's indirect costs associated with administering the technical assistance portion of the Tribal Allocation Subaccount shall not exceed 30.9% of the overall costs in providing technical assistance under subparagraph 2.1.1.1 (i.e., of the 5% portion that will be used for technical assistance, no more than 30.9% of the 5% portion may consist of indirect costs). For purposes of this subparagraph, "indirect costs" are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. As required by subparagraph 2.1.1.23, the technical assistance provider shall separately set forth the indirect costs in each annual budget submitted to the Trustee. These indirect costs are subject to the limitations in the Federal Acquisition Regulations at 48 C.F.R. § 31.205.

2.1.1.42.1.1.5 **Reporting Obligations.** No later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, the technical assistance provider shall provide a semiannual report to the Trustee describing the progress implementing the technical assistance services during the six-month period leading up to the reporting date (including a summary of all costs expended on the services through the reporting date). Such reports shall include a complete description of the status, development, and implementation of the services. These reports shall be signed by an official with the authority to submit the report for the technical assistance provider and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

2.1.1.52.1.1.6 **Unused Funds.** Upon the termination or completion of services by the technical assistance provider, any unused funds shall be returned by the technical assistance provider to the Indian Tribe Trust and

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added back to the Tribal Allocation Subaccount, Not later than December 31, 2022, any unused funds held by the technical assistance provider shall be returned to the Indian Tribe Trust.

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2.1.2 Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests.

2.1.2.1 Establishment of Beneficiary Status and Funding Requests. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court, ~~at the time it submits its first funding request, including any request seeking DERA funds, a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3) ("Certification Form"), (Appendix D-3),~~ containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Beneficiary Status Certification Form with the Court, each Indian Tribe shall also concurrently provide a copy of the Beneficiary Status Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. ~~Any funding request submitted by any Indian Tribe must~~

2.1.2.2 Designated Beneficiary's Participation Notice. Beginning with the second funding cycle, after an Indian Tribe has been designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1, that Indian Tribe Beneficiary may participate in the second and any subsequent funding cycle by submitting to the Trustee, pursuant to subparagraphs 5.0.5.3.3 and 5.0.5.3.5, a Designated Beneficiary's Participation Notice (Appendix D-6) by the deadline established for each funding cycle in which it would like to participate.

~~2.1.2.1.2.3~~ 2.1.2.3 Funding Requests. In any request for Eligible Mitigation Action funding submitted to the Trustee by any Beneficiary, the Beneficiary shall timely submit an EMA Certification Form (Appendix D-4) for each funding cycle, and shall comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, ~~and each.~~ Each allocation given provided to any Indian Tribe that is determined to be designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1 shall be subject to Paragraph 5.3 and subparagraphs 5.0.5, 5.2.17, and 5.4.5.

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2.1.3 Intentionally Reserved.

2.1.3.1 Intentionally Reserved.

2.1.3.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall establish a

Tribal Administration Cost Subaccount that shall be funded in accordance with the specific allocation for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). The funds in this subaccount shall be used exclusively to pay for the Indian Tribe Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee, consistent with the weighted average allocation percentage of 2% set forth in Appendix D-1B, [\(Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation\)](#), may also draw upon this account to pay 2% of the Start-up Costs and 2% of the Shared State and Indian Tribe Administration Costs, in accordance with Paragraph 3.6. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Trust Administration Costs relating to the Tribal Administration Cost Subaccount, other than investment earnings on the Tribal Administration Cost Subaccount, absent further order of the Court. [If additional funds are required to fund this Tribal Administration Cost Subaccount, the Trustee shall confer with the United States to attempt to find an appropriate resolution to address any funding shortfall.](#)

- 2.1.4 [Tribal Advisory Council](#). In comments received during the ~~consultation process~~ [Consultation Process](#) referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and fund a Tribal Advisory Council to: [\(i\) advise the Trustee technical assistance provider in evaluating tribal funding requests for Eligible Mitigation Actions; \(ii\) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and \(iii\) provide a forum for Indian Tribes to discuss issues relating to the administration of the Indian Tribe Trust Agreement.](#) The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. [Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members.](#) The Trustee shall set aside \$30,000 of the Tribal Administrative Cost Subaccount into a separate subaccount, the Tribal Advisory Council Subaccount, for record keeping purposes only, to fund a Tribal Advisory Council ~~to advise for the Trustee purposes listed in evaluating tribal funding requests~~ [this subparagraph](#). The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.2, ~~2.1.1.3,~~ [2.1.1.4,](#) and [2.1.1.45](#) with respect to funding requests and reporting obligations for the Tribal Advisory Council. [The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.](#) Upon the termination or completion of services by the Tribal Advisory Council, any unused funds shall be returned by the Institute for Tribal Environmental Professionals to the Indian Tribe Trust and added back to the Tribal Administration Cost Subaccount.

2.1.5 Tax Payment Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall deduct an amount equal to the estimated taxes owed on earnings of the Trust Funds while on deposit in the Court Registry that have been allocated to the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1. The amount of the deduction shall be based on applicable income tax withholding and reporting requirements, and consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. Such amount shall be deposited into a dedicated, non-interest bearing account ("Tax Payment Subaccount"). In addition, prior to the allocation of any investment income pursuant to subparagraph 3.2.3, the Trustee shall deduct an amount equal to the estimated taxes owed on such earnings and deposit that sum into the Tax Payment Subaccount. The amounts in this Tax Payment Subaccount shall be used for the express purpose of paying all applicable taxes with respect to the Indian Tribe Mitigation Trust in a manner consistent with Paragraph 6.7. If at any time the funds on deposit in this Tax Payment Subaccount are insufficient to pay all Taxes then due and owing, the Trustee shall seek to resolve any dispute pursuant to the dispute resolution procedures of Paragraph 6.2.

2.2 Trust Limitations

2.2.1 No Consent Decree Party or Beneficiary, nor any of ~~theirs~~ components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Indian Tribe Mitigation Trust.

2.2.2 All Trust Assets shall be used solely for the purposes provided in the Consent Decree and this Indian Tribe Trust Agreement.

2.2.3 This Indian Tribe Mitigation Trust is irrevocable. The Defendants: (i) shall not retain any ownership or residual interest whatsoever with respect to any Trust Assets, including, but not limited to, the funds transferred by the Defendants to fund the Indian Tribe Trust pursuant to the terms of the Consent Decree, (ii) shall not have any liabilities or funding obligations with respect to the Indian Tribe Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree, and (iii) shall not have any liability or obligation to pay tax on any income or gains from any investments of Trust Assets. Nor shall the Defendants have any rights or role with respect to the management or operation of the Indian Tribe Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.4 Exculpation. Neither the Trustee and its officers, directors, and employees, the Investment Manager and its officers, directors, and employees, the Tax Professionals nor the Indian Tribe Mitigation Trust shall have any liability whatsoever to any person or party for any liability of the Defendants; provided, however, that the Indian Tribe Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Indian Tribe Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: Pursuant to Paragraph 15.e. of the First Partial Consent Decree, the Court appointed Wilmington Trust, N.A., as Trustee of the Environmental Mitigation Trust. Dkt. No. 3030 at 2. Wilmington Trust, N.A., not individually but in its representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such capacity to the Indian Tribe Mitigation Trust and for the benefit of the Beneficiaries.

3.0.1 Wilmington Trust, N.A. is acting in two separate and distinct roles under the Indian Tribe Mitigation Trust: (1) as the Trustee of the Indian Tribe Mitigation Trust; and (2) as the Investment Manager of the Trust Assets. These roles are subject to different standards of care. Wilmington Trust, N.A., acting as Trustee, is subject to the standard of care set forth in subparagraphs 3.1.1 and 3.5.2. In its role as Investment Manager, Wilmington Trust, N.A. is subject to the standard of care set forth in subparagraph 3.2.2.

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3.1 Powers of the Trustee

3.1.1 Except as set forth in this Indian Tribe Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Indian Tribe Mitigation Trust, which shall be exercised in an efficient and expeditious manner in furtherance of and in a manner consistent with the purposes of this Indian Tribe Trust Agreement and the Consent Decree. Subject to the limitations on liability set forth in subparagraph 3.5.2, the Trustee shall act in accordance with the current professional standards of care and with the diligence, skill, and care expected for the administration of such a Trust. The Trustee shall have only such duties, rights, powers, and privileges expressly set forth in the Consent Decree, this Indian Tribe Trust Agreement, and as otherwise provided by the Delaware Act. No implied duties (including fiduciary duties) shall be read into this Indian Tribe Trust against Wilmington Trust, N.A., acting as the Trustee.

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3.1.2 Upon the Trust Effective Date, the powers of the Trustee shall include the following:

3.1.2.1 To receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of this Indian Tribe Trust Agreement or to engage a professional investment manager ("Investment Manager") to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 for the benefit of the Beneficiaries. The Trustee appoints Wilmington Trust, N.A. as the Investment Manager for the Indian Tribe Mitigation Trust pursuant to an Investment Management Agreement entered into on the Trust Effective Date to manage the Trust Assets in accordance with Paragraph 3.2;

- 3.1.2.2 To establish and maintain a public-facing website onto which it will post all materials as required hereunder;
- 3.1.2.3 To establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries. Initially, the Trustee will use Intralinks to provide this method of communication. The Trust may change this method at any time but shall provide 30 Days' notice to the Beneficiaries in connection with any change;
- 3.1.2.4 To hold title to property in the name of the Trustee in its capacity as such;
- 3.1.2.5 To incur, and pay from the Tribal Administration Cost Subaccount, any and all customary and commercially reasonable charges and expenses upon or connected with the administration of this Indian Tribe Mitigation Trust in the discharge of its obligations hereunder, including 2% of Start-up Costs ~~and~~, 2% of Shared State and Indian Tribe Administration Costs, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement;
- 3.1.2.6 To engage and compensate professionals to assist the Trustee in accordance with this Indian Tribe Trust Agreement, including, but not limited to, legal, environmental, investment, accounting, tax, website, and third-party auditing professionals, or internet service providers, or insurance providers. Such third-party auditing professionals may be used by the Trustee to audit and/or review expenditures to verify that they comport with the requirements and limitations on use of Trust Funds, as set forth herein. The Trustee may initiate such an audit and/or review on its own initiative or in response to credible reports or suggestions that such review or audit is appropriate. The Trustee shall have an annual independent audit prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual audit starting in year seven or at an earlier time in order to preserve Trust Funds;
- 3.1.2.7 To engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust, and to take such actions as may be reasonably necessary to secure such ruling and to ensure that the Indian Tribe Mitigation Trust continues to comply with such ruling upon the advice of the Tax Professionals. The Trustee may engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS that investment income earned on the Trust Assets will be excludible from gross

income upon the advice of Tax Professionals that the pursuit of such a Private Letter Ruling is prudent; ~~and~~

- 3.1.2.8 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Indian Tribe Mitigation Trust, the Trust Assets, the Trustee and its officers, directors, and employees, Wilmington Trust, N.A., in its role as Investment Manager, and its officers, directors, and employees, and to cover Tax Professionals, if required, from any and all Claims that might be asserted against each;
- 3.1.2.9 To distribute Trust Assets for the purposes contemplated in this Indian Tribe Trust Agreement and the Consent Decree, including ~~distributions~~ the allocation of funds to Beneficiaries for approved Eligible Mitigation Actions;
- 3.1.2.10 To file documents in Court on behalf of itself and the Indian Tribe Trust;
- 3.1.2.11 To make all necessary state and federal filings and to provide information as required by law;
- 3.1.2.12 To vote shares or other investments;
- 3.1.2.13 To open or maintain any additional bank accounts, or close bank accounts or open securities accounts as are necessary or appropriate to manage the Trust Assets;
- 3.1.2.14 To apply, as soon as practicable after the Trust Effective Date, for an employer identification number for the Indian Tribe Trust pursuant to IRS Form SS-4, and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4);
- 3.1.2.15 To deduct and withhold from allocation of investment earnings to the Beneficiaries under subparagraph 3.2.3 all Taxes that the Trustee may be required to deduct and withhold under any provision of tax law, and any allocation of investment income under subparagraph 3.2.3 to an Indian Tribe Trust subaccount shall be reduced to the extent such withheld amounts are remitted to the appropriate taxing authority;
- 3.1.2.16 To file on behalf of the Indian Tribe Trust all required Tax Returns, which shall be completed in consultation with Tax Professionals, ensure compliance with withholding and reporting requirements, and pay any and all Taxes, including estimated Taxes, due and owing with respect to the Indian Tribe Trust from amounts in the Tax Payment Subaccount pursuant to subparagraph 2.1.5; and

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3.1.2.17 Subject to applicable requirements of this Indian Tribe Trust Agreement (including the limitations on liability set forth in subparagraph 3.5.2), the Consent Decree, and other applicable law, to effect all actions and execute and deliver all contracts, instruments, agreements, or other documents that may be necessary to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree, each in accordance with its duties and the current professional standards of care, and with the diligence, skill, and care expected for the administration of such a Trust for the benefit of the Indian Tribes.

3.1.2.18 Duty to Comply with Law. The Trustee shall not be required to take any action that would violate a law or regulation to which it is subject.

3.1.2.19 Relation-Back Election. If applicable, the Trustee and the Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the Indian Tribe Trust as coming into existence as a settlement fund as of the earliest possible date.

3.2 Investment of Trust Assets: The Trustee shall engage the Investment Manager to invest and reinvest the principal and income of the Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs.

3.2.1 Any investment income that is not reinvested shall be deposited into the Indian Tribe Trust Account for distributional allocation among the Beneficiaries.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee or Investment Manager must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with like aims. The Investment Manager shall comply with all applicable laws and shall be held to a fiduciary standard of care with respect to the investment and reinvestment of the principal and income of Trust Assets; except that the right and power of the Investment Manager to invest and reinvest the Trust Assets shall be limited to: (i) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (ii) U.S. Treasury bills, bonds, and notes, including, but not limited to, long-term U.S. Treasury bills, bonds, and notes; (iii) repurchase agreements for U.S. Treasury bills, bonds, and notes; (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or (v) open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection. The Investment Manager shall maintain prudent diversification across instruments and specific issuers. The value of bonds of any single company and its affiliates owned by the Indian Tribe Trust directly rather than through a mutual fund shall not exceed

10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies. Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments made by the Investment Manager shall be made on the date of acquisition of any such investment or on the date of re-investment. The Investment Manager shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Investment Manager determines that any particular investment no longer meets the rating requirement, the Investment Manager shall substitute that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Investment Manager believes it is in the interest of the Indian Tribe Trust to do so. The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. This subparagraph 3.2.2 shall act as a standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash, which shall be invested in The Blackrock Fed Fund (CUSIP 09248U809). Except for actions or omissions of the Investment Manager that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, the Investment Manager and its officers, directors, or employees shall have no liability for any and all Claims.

3.2.3 **Allocation of Investment Income.** Any and all earnings, interest, and other investment income realized on the investment of the Trust Assets shall be allocated to each Indian Tribe Trust subaccount on the basis of the respective subaccount balances at the end of each month. Any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount shall be allocated to that administration subaccount on the basis of the administration subaccount balance at the end of each month.

3.2.4 Nothing in this Section shall be construed as authorizing the Trustee to cause the Indian Tribe Mitigation Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Assets or any portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Indian Tribe Mitigation Trust.

3.3 Accounting: The Trustee shall maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against the Indian Tribe Mitigation Trust. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles (“GAAP”). The United States, by and through EPA, and each Beneficiary, shall have the right upon 14 Days’ prior written notice to inspect such books and records, as well as all supporting documentation. Except as otherwise provided herein, the Trustee shall not be required to file any accounting or seek approval of the

Court with respect to the administration of the Indian Tribe Mitigation Trust, or as a condition for making any payment, allocation or distribution out of the Trust Assets.

3.3.1 Semi-Annual~~Semiannual~~ Reporting. Within 180 Days of the Trust Effective Date in the first year, and thereafter by February 15 (for the preceding six-month period of July 1 to December 31) and August 15 (for the preceding six-month period of January 1 to June 30) of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to Paragraph 6.8 hereof (each a “Financial Reporting Date”), the Trustee shall file with the Court and provide each known Beneficiary, the Technical Assistance Provider~~technical assistance provider~~, and the Defendants with:

- 3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Indian Tribe Trust (including applicable ratings on such investments); and (iii) including a cumulative and calendar year accounting of the amount the Trustee has paid out from the Indian Tribe Trust Account and all subaccounts to any recipient;
- 3.3.1.2 Regarding the Tribal Allocation Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) the initial allocation of Trust Assets in the Tribal Allocation Subaccount; (ii) any allocation adjustments pursuant to this Indian Tribe Trust Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) the remaining and projected amount in the Tribal Allocation Subaccount. Such accounting shall also include, for each Beneficiary, a balance statement and projected annual budget of disbursements taking into account those Eligible Mitigation Actions that have been approved as of the Financial Reporting Date;
- 3.3.1.3 Regarding the Tribal Administration Cost Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; and (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs;
- 3.3.1.4 For the Indian Tribe Trust Account and all subaccounts, including, but not limited to the Tribal Administration Cost Subaccount, balance statements and 3~~one~~-year projected annual budgets that itemize all assets, income, earnings, expenditures, allocations, and disbursements of Trust Assets by Indian Tribe Trust Account and each subaccount;
- 3.3.1.5 Third-party audited financial reports disclosing and certifying the disposition of all Trust Assets from the Trust Effective Date through the calendar quarter immediately preceding the Financial Reporting Date, specifically including reconciliations of the Trustee’s prior budget projections for Trust Administration Costs to actual performance;

3.3.1.6 A description of any previously unreported action taken by the Indian Tribe Trust in performance of its duties which, as determined by the Trustee, counsel, accountants, or other professionals retained by the Trustee, affects the Indian Tribe Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Indian Tribe Trust Agreement and the Consent Decree during the previous year; and

3.3.1.8 On each Financial Reporting Date, the Trustee shall simultaneously publish on the Indian Tribe Trust's public-facing website all information required to be provided under Paragraph 3.3.

3.3.2 After the Termination Date, the Trustee intends to destroy all records retained pursuant to this Indian Tribe Trust Agreement. The Trustee shall notify the United States and the Defendants at least 90 Days prior to the destruction of the records. Upon request by the United States or the Defendants, the Trustee shall deliver any such records to EPA or the Defendants, respectively.

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3.4 Limitation of the Trustee's Authority: The Trustee is not authorized to engage in any trade or business with respect to the Trust Assets or proceeds therefrom. This provision does not prevent Wilmington Trust, N.A. from acting as the Investment Manager.

3.5 Conditions of Trustee's Obligations: The Trustee accepts appointment as the Trustee subject to the following express terms and conditions:

3.5.1 No Bond. Notwithstanding any state or tribal law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

3.5.2 Limitation of Liability and Standard of Care for the Trustee. In no event shall the Trustee be held personally liable for any and all Claims asserted against the Trustee and/or the Indian Tribe Mitigation Trust except for actions or omissions of the Trustee that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Trustee. The Trustee shall not be held personally liable for carrying out the express terms of this Indian Tribe Mitigation Trust or carrying out any directions from the Beneficiaries or the United States issued in accordance with this Indian Tribe Trust Agreement or in accordance with any Court Order entered in connection with or arising out of the Indian Tribe Mitigation Trust. The Trustee shall not be held personally liable for any failure or delay in the performance of its obligations hereunder arising from causes beyond the control of the Trustee ("Force Majeure"). The Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a final, non-appealable judgment of the Court determining fraud, negligence, or willful misconduct on the part of the Trustee in following such advice. The Trustee shall not be held liable for the negligence, fraud, or willful misconduct of any professional hired by it hereunder provided

that the Trustee appointed and engaged the professional with due care. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a final, non-appealable judgment of the Court, the Trustee shall not be personally liable to persons seeking payment from or asserting any and all Claims against the Indian Tribe Mitigation Trust or the Trustee. The Trustee, which is a trustee of this Indian Tribe Trust that has been established under the Delaware Act, shall only be held to the standards of care set forth in this subparagraph 3.5.2; the standards of common law trust laws or the personal trust laws of any state shall not apply in any circumstances hereunder.

3.5.2.1 Limitation of Liability for Tax Professionals. In no event shall the Tax Professionals engaged by the Trustee to assist it with the administration of the Indian Tribe Mitigation Trust be held personally liable for any and all Claims asserted against them except for actions or omissions of the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Tax Professionals.

3.5.3 Indemnification. Except for actions or omissions of the Trustee, the Investment Manager, and the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee, the Investment Manager, or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification from the Trust Assets, solely as provided in this subparagraph 3.5.3, to hold them harmless against any and all Claims brought against any of them arising out of or in connection with the acceptance or administration of their duties under this Indian Tribe Mitigation Trust, including any and all Claims in connection with enforcing their rights hereunder and defending themselves against any and all Claims. In asserting any indemnification claim against Trust Assets pursuant to this subparagraph 3.5.3, the Trustee, the Investment Manager, and the Tax Professionals shall first seek to recover the amount by asserting a claim against the Trustee's insurance policies purchased pursuant to subparagraph 3.1.2.8 to protect the Trustee, the Investment Manager, and the Tax Professionals hired hereunder against any and all Claims. With respect to any and all amounts that: (1) are not fully and timely paid to the Trustee, the Investment Manager, or the Tax Professionals pursuant to the insurance policies purchased pursuant to subparagraph 3.1.2.8, and (2) are not determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee or the Investment Manager or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification solely from the portion of Trust Assets in ~~(4a)~~ the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and ~~(2b)~~ the investment earnings on the Tribal Administration Cost Subaccount. Indemnification under this subparagraph 3.5.3 covers only the amounts not fully and timely paid or covered by insurance policies purchased pursuant to subparagraph 3.1.2.8. The Trustee, the Investment Manager, and the Tax Professionals shall reimburse the Indian Tribe Mitigation Trust for any amount advanced to them or paid from the Tribal Administration Cost Subaccount for any Claim if any proceeds are paid on such Claim from insurance policies purchased pursuant to subparagraph 3.1.2.8. If

insurance payments are denied in whole or part, the Trustee shall confer with legal counsel and consider whether to affirmatively pursue such insurance payments including, without limitation, an insurance coverage suit arising out of a wrongful denial of coverage. For the avoidance of doubt, subparagraphs 3.5.2, 3.5.2.1, and 3.5.3 do not create for the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, and the Tax Professionals hired hereunder any express or implied right to indemnification from any Consent Decree Party for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or the Tax Professionals, and no Consent Decree Party shall be liable for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or Tax Professionals.

3.5.4 Reliance on Documentation. The Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries, including the [Certification for Beneficiary Status under Environmental Mitigation Trust Agreement Certification Form](#) (Appendix D-3) ~~and each Beneficiary Eligible Mitigation Action~~ [the EMA Certification Form](#) (Appendix D-4), [the Designated Beneficiary's Participation Notice](#) (Appendix D-6), and [the Beneficiary's Election to Opt Out Form](#) (Appendix D-7). The Trustee shall have no duty to monitor or supervise the use of Trust Funds paid in accordance with Beneficiary Eligible Mitigation Action Certification and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action. [The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the technical assistance provider, including, without limitation, the technical assistance provider's report relating to EMA Certification Forms \(Appendix D-4\) that it has reviewed in each funding cycle pursuant to subparagraph 2.1.1.2, its annual budget pursuant to subparagraph 2.1.1.3, and its report relating to its services and expenditures pursuant to subparagraph 2.1.1.5.](#)

3.5.5 Right to Demand Documentation. Notwithstanding anything else in this Indian Tribe Trust Agreement, in the administration of the Trust Assets, the Trustee shall have the right, but shall not be required, to demand from the relevant Beneficiary [or the technical assistance provider](#) before the disbursement of any cash or in respect of any action whatsoever within the purview of this Indian Tribe Mitigation Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

3.5.6 Limitation on Consequential Damages. Unless the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have engaged in fraudulent or willful misconduct, the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall not have any right to recover, and the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals shall not be liable for, any special, indirect, punitive, or consequential loss or damages, of any kind whatsoever, against the Indian Tribe Mitigation Trust, the Trustee, the Investment

Manager, or the Tax Professionals. When the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have been negligent, any and all Claims by the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall be limited to direct damages.

3.5.7 No Consequential Damages. In no event shall the Trustee, the Investment Manager, the Tax Professionals, or the Indian Tribe Mitigation Trust be held responsible or liable for special, indirect, punitive, or consequential loss or damages of any kind whatsoever in connection with any and all Claims brought against them by any third party.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in Appendix D-1 (Initial Allocation) and Appendix D-1A-~~7~~ (Initial 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the administration of the Indian Tribe Trust, including payment of professionals hired in connection with the duties and responsibilities of the Indian Tribe Trust, payment of insurance premiums for policies purchased pursuant to subparagraph 3.1.2.8, payment of a deductible incurred under an insurance policy for the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals hired hereunder purchased pursuant to subparagraph 3.1.2.8 in cases in which the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals would be entitled to indemnification under subparagraph 3.5.3, ~~and~~ any indemnification amounts as provided in accordance with subparagraph 3.5.3, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Indian Tribe Mitigation Trust, in accordance with the projected annual budgets for administration of the Indian Tribe Mitigation Trust required under subparagraph 3.3.1 hereof, and shall be entitled to pay itself from the Tribal Administration Cost Subaccount its initial fee and its annual administration fee as set forth in its fee letter dated as of the Trust Effective Date (“Trustee Fee Letter”). The Trustee shall provide a copy of the Trustee Fee Letter to each Beneficiary via the secure internet site established by the Trustee pursuant to subparagraph 3.1.2.3. Consistent with the weighted average allocation rates set forth in Appendix D-1B-~~7~~ (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount 2% of Start-up Costs and 2% of Shared State and Indian Tribe Administration Costs. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the specific allocation established for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial Allocation) and Appendix D-1A-~~7~~ (Initial 3.0 Liter Allocation), plus any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount. The Trustee shall not use the Tribal Administration Cost Subaccount to pay: (1) the fees and expenses of the Investment Manager; or (2) any and all Taxes due and owing with respect to the Indian Tribe Trust. In accordance with the terms of the Investment Management Agreement, the Investment Manager’s fees and expenses shall be deducted directly from the investment earnings on the Trust Assets, and not from the corpus of the Trust Assets. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established in subparagraph 2.1.5. The Trustee shall include in its ~~semi-annual~~semiannual reporting, and post on its public-facing website, all Trust Administration Costs (including the costs

and descriptions of the Trustee's services rendered on behalf of the Indian Tribe Trust) at least 15 Days prior to the payment of any such expense; provided, however, that the requirement to post all Trust Administrative Costs at least 15 Days prior to payment shall first take effect when the website is established and ready for use, and shall not initially apply to Start-up Costs and to Shared State and Indian Tribe Administration Costs. In addition, any and all payments relating to Taxes are not subject to the 15-Day posting requirement on the public-facing website. After the Tribal Administration Cost Subaccount is funded pursuant to subparagraph 2.1.3.2, the Trustee, after receipt of invoices from any third-party service providers, shall pay as promptly as practical any and all fees, costs, and expenses incurred by the Trustee to establish the Indian Tribe Mitigation Trust including, but not limited to: (1) the invoices of third-party service providers (e.g., legal, accounting, website developer, and hosting provider); (2) fees, costs, and expenses necessary to commence the operations of the Indian Tribe Trust (e.g., Intralinks, Pacer, and insurance premiums); and (3) the Trustee's acceptance fee and first quarter portion of the Trustee's annual fee for the first year. All Trust Administration Costs that are paid prior to the establishment of the website shall be posted on the website as promptly as practicable after the website is established. Such information shall remain available on the website until the Termination Date.

3.7 Termination, Resignation, and Removal of the Trustee

3.7.1 Termination of Trustee. The rights, powers, duties, and obligations of the Trustee to the Indian Tribe Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. The Trustee may commence the resignation process at any time by providing 90 Days' notice to the United States, the Defendants, and the Beneficiaries. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the First Partial Consent Decree; and (ii) order of the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the appointment of a successor trustee or as otherwise ordered by the Court, the Trustee shall transfer all Indian Tribe Trust records to the successor trustee, and shall take all actions necessary to assign, transfer, and pay over to the successor trustee control of all Trust Assets (including the public website maintained by the Trustee). In the event that the Trustee ceases to exist or ceases to operate its corporate trust business, the Court may, upon motion by the United States or any Beneficiary, appoint an interim Trustee until such time as a successor trustee is appointed in accordance with the procedures set forth in the First Partial Consent Decree. Any successor Trustee appointed hereunder shall file an amendment to the Certificate of Trust as required by the Delaware Act.

IV. INDIAN TRIBE MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each Indian Tribe may elect to become a Beneficiary hereunder by filing with the Court a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. For the first funding cycle, an Indian Tribe was required to file its Beneficiary Status Certification Form (Appendix D-3) at the

time it ~~is~~ filed its first funding request, including any request seeking DERA funds, ~~which was due 90 Days after the Trust Effective Date. In order to qualify as a designated Beneficiary for funding cycles after the first funding cycle, any Indian Tribe, which has not yet been designated as a Beneficiary by the Trustee, shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court by the following deadlines: for the second funding cycle -- by December 3, 2018; for the third funding cycle -- by December 3, 2019; for the fourth and any subsequent funding cycle -- by December 3, 2020.~~ At the time of filing the Beneficiary Status Certification Form (Appendix D-3) with the Court, each Indian Tribe shall also ~~provide, by the same deadlines, concurrently deliver~~ a copy of the Beneficiary Status Certification Form (Appendix D-3) to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Each Indian Tribe that timely files such certifications shall be a "Certifying Entity." The Trustee shall be responsible for ensuring that the form of each certification complies with the requirements hereof prior to deeming any Certifying Entity to be a Beneficiary pursuant to subparagraphs 4.020.2 and 5.0.5.1.

4.0.1 **Notice of Objection.** If the United States determines that a ~~certification~~ Beneficiary Status Certification Form (Appendix D-3) filed by any Certifying Entity fails to comply with the requirements of this Section, the United States may file with the Court a notice of objection within 30 Days after ~~the deadline for each funding cycle set in Paragraph 4.0~~ for a Certifying Entity ~~files to file~~ its ~~certifications~~ Beneficiary Status Certification Form (Appendix D-3) with the Court. Such notice shall explain the basis of objection with specificity. Any such objections shall be resolved according to the procedures set forth in Paragraph 6.2.

4.0.2 **Notice of Beneficiary Designation.** Regarding the determination of Beneficiary status for Indian Tribes pursuant to subparagraphs 5.0.5 and 5.0.5.1, ~~not later than 120 Days after the Trust Effective Date,~~ the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity ~~lists indicating a~~ Notice of Beneficiary Designation according to the following schedule: ~~for the first funding cycle -- not later than 120 Days after the Trust Effective Date; for the second funding cycle -- by February 4, 2019; for the third funding cycle -- by February 3, 2020; for the fourth funding cycle and any subsequent funding cycle -- by February 3, 2021. The Trustee's Notice of Beneficiary Designation shall indicate:~~

4.0.2.1 Which Certifying Entities filed certifications as to which no notice of objection has been filed. Upon the filing of this Notice of Beneficiary Designation, each such Certifying Entity shall be deemed a "Beneficiary" hereunder; and

4.0.2.2 Intentionally Reserved.

4.0.2.3 Which Certifying Entities timely filed certifications as to which a notice of objection has been filed pursuant to subparagraph 4.0.1, together with an explanation of the status of any such objection. Each such Certifying Entity shall be a "Pending Beneficiary." Upon final resolution of each objection, the Pending Beneficiary shall either be deemed a Beneficiary or not qualified as a Beneficiary under this Indian Tribe Trust Agreement.

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4.0.2.4 Once a Certifying Entity has been deemed a Beneficiary hereunder, it remains a Beneficiary for all future funding cycles, and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

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4.1 Intentionally Reserved.

4.2 Required Certifications in Appendix D-3 Form

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Beneficiary Status Certification Form (Appendix D-3) must include a designation of lead agency, certified by the Office of the Governor (or the analogous chief executive) of the Indian Tribe on whose behalf the Beneficiary Status Certification Form is submitted, indicating which agency, department, office, or division will have the delegated authority to act on behalf of and legally bind such Indian Tribe. The Beneficiary Status Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Beneficiary Status Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this Indian Tribe Trust Agreement, including the allocations of Trust Assets provided hereunder, and to be subject to the jurisdiction of the Court for all matters concerning the interpretation or performance of, or any disputes arising under, this Indian Tribe Trust Agreement. The Certifying Entity's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

4.2.2 Consent to Trustee Authority. Each Beneficiary Status Certification Form (Appendix D-3) must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Indian Tribe Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds hereunder; and (ii) to implement this Indian Tribe Trust Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Beneficiary Status Certification Form (Appendix D-3) must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; and (ii) prior to requesting any funds hereunder, the Certifying Entity has obtained full legal authority to receive and/or direct payments of such funds. If the Certifying Entity fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary pursuant to subparagraphs 4.0.2.1 and 5.0.5.1 until it has obtained such legal authority.

4.2.4 Certification of Legal Compliance. Each Beneficiary Status Certification Form (Appendix D-3) must include a certification and agreement that, in connection with all actions related to this Indian Tribe Trust, the Certifying Entity has followed and will follow all applicable law and that such Certifying Entity will assume full responsibility for its decisions in that regard.

4.2.5 Certification of Eligible Mitigation Action Accounts. Each [Beneficiary Status](#) Certification Form (Appendix D-3) shall include a certification by the Certifying Entity that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trustee for credit to the Tribal Allocation Subaccount.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each [Beneficiary Status](#) Certification Form (Appendix D-3) shall include an express waiver by the Certifying Entity, on behalf of itself and all of its agencies, departments, offices, and divisions, in favor of the parties to the Consent Decree (including the Defendants) of all claims for injunctive relief to redress environmental injury caused by the Subject Vehicles, whether based on the environmental or common law within its jurisdiction. Such waiver shall be binding on all agencies, departments, offices, and divisions of such Beneficiary asserting, purporting to assert, or capable of asserting such claims. The waiver need not waive, and the Certifying Entities may expressly reserve, their rights, if any, to seek fines or penalties. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

4.2.7 Publicly Available Information. Each [Beneficiary Status](#) Certification Form (Appendix D-3) must include a certification by the Certifying Entity that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Certifying Entity, each until the Termination Date, unless the laws of the Certifying Entity require a longer record retention period. This certification shall include an explanation of the procedures by which the records may be accessed. These procedures shall be designed to support access and limit the burden for the general public. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

4.2.8 Notice of Availability of Mitigation Action Funds. Each [Beneficiary Status](#) Certification Form (Appendix D-3) must certify that, not later than 30 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, the Certifying Entity will provide a copy of this Indian Tribe Trust Agreement with [Attachments/Appendices](#) to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal Agency that has custody, control, or management of land within or contiguous to the territorial boundaries of the Certifying Entity and has by then notified the Certifying Entity of its interest hereunder, explaining that the Certifying Entity may request Eligible Mitigation Action funds for use on lands within that Federal Agency's custody, control, or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Certifying Entity will review, consider, and make a written determination upon each such request. For the U.S. Department of the Interior and the U.S. Department of Agriculture, Beneficiaries may provide notice as required by this subparagraph to the following:

Department of the Interior:

National Park Service, Air Resources Division
VW Settlement
P.O. Box 25287
Denver, CO 80225-0287
Or via email to: vwsettlement@nps.gov.

Tim Allen or other designated representative
U.S Fish and Wildlife Service
National Wildlife Refuge System
Branch of Air Quality
Re: VW Settlement
7333 W. Jefferson Ave., Suite 375
Lakewood, CO 80235-2017
Or via email to: VW_Settlement@fws.gov

Department of Agriculture:

Linda Geiser or other designated representative
National Air Program Manager
lgeiser@fs.fed.us
(202) 756-0068

Bret Anderson or other designated representative
National Air Modeling Coordinator
baanderson02@fs.fed.us
(970) 295-5981

4.2.9 Registration of Subject Vehicles. Each Beneficiary Status Certification Form (Appendix D-3) must state, for the benefit of the parties to the Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that the Certifying Entity:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
- (a) i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

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(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or Emissions Compliant Recall based solely on:

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- i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
- ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the First Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
- iii. Other emissions-related vehicle characteristics that result from the modification; or
- iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

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(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Certifying Entity by the Defendants.

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(d) Notwithstanding the foregoing, a Certifying Entity may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Certifying Entity's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act, 42 U.S.C. §§ 7543, 7507, and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

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V. ~~DISTRIBUTION~~ ALLOCATION OF INDIAN TRIBE MITIGATION TRUST ASSETS

5.0 Intentionally Reserved.

5.0.1 Intentionally Reserved.

5.0.2 Intentionally Reserved.

5.0.3 Allocation of Appendix A Mitigation Trust Payments. Any "National Mitigation Trust Payment" made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) of the First Partial Consent Decree or Section X (Recall Rate) of Appendix A (Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant Recall Program) of the Second Partial Consent Decree shall be allocated in accordance with Appendix D-1B (Weighted Average

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[Allocation Formula for 2.0 and 3.0 Liter Allocation](#)) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.4 Allocation of Appendix B Mitigation Trust Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) of the First Partial Consent Decree or Appendix B (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject Vehicles) of the Second Partial Consent Decree or any Consent Decree provisions related thereto shall be allocated in accordance with Appendix D-1B ([Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation](#)) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.5 Distribution Allocation of Tribal Allocation Subaccount. Within 30 Days after the Trust Effective Date, the

5.0.5.1 Trustee's Notices. The Trustee shall post a notice on the Indian Tribe Mitigation Trust's public-facing website [according to the following schedule](#):

5.0.5.1 Notice(a) First Funding Cycle. Within 30 Days after the Trust Effective Date, the Trustee was required to post notice: (i) that each Indian Tribe may seek to become a Beneficiary hereunder by filing with the Court, at the time it submits its first funding request, a [Certification for Beneficiary Status under Environmental Mitigation Trust Agreement Certification Form](#) (Appendix D-3) consistent with Paragraph 4.2; ~~and (ii)~~ (ii) that each Indian Tribe may submit to the Trustee an EMA Certification Form (Appendix D-4) [that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by 90 Days after the Trust Effective Date; and \(iii\) stating](#) the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying Indian Tribe, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3. [In accordance with this schedule, the Trustee filed a Notice of Beneficiary Designation with the Court on January 29, 2018, which designated 29 Indian Tribes as Beneficiaries pursuant to the terms of the Indian Tribe Trust Agreement. The Notice of Beneficiary Designation stated that two Tribes of the 29 designated Beneficiaries did not file a Beneficiary Status Certification Form \(Appendix D-3\) and an EMA Certification Form \(Appendix D-4\) by the deadline for the first funding cycle, and are not eligible to participate in the first funding cycle.¹ In addition, one Tribe of the 29 designated Beneficiaries applied for the DERA Option described in Appendix D-2 \(Eligible Mitigation Actions and Mitigation Action Expenditures\), did not receive a DERA Award from EPA, and is not eligible to participate in the first funding cycle.² As provided in subparagraph](#)

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¹ [These two Tribes are the Southern Ute Indian Tribe and the Swinomish Indian Tribal Community.](#)

² [This Tribe is the San Manuel Band of Mission Indians.](#)

4.0.2.4, once a Certifying Entity has been deemed a Beneficiary, it remains a Beneficiary for all future funding cycles and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

5.0.5.2 — Notice that each Indian Tribe may submit to the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by the following funding request deadlines for six annual funding cycles: (1) for the first funding cycle only — 90 Days after the Trust Effective Date; and (2) for each funding cycle for years two through six — by September 1, 2018, through September 1, 2022, respectively. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate may be submitted to the Trustee for purposes of the funding request deadline. Any funding requests received by the Trustee after a funding request deadline for a funding cycle will be processed by the Trustee pursuant to subparagraph 5.2.16 in the next funding cycle.

Regardless of the total amount of (b) Other Funding Cycles. For funding cycles after the first funding cycle, the Trustee shall post a notice on the Indian Tribe Trust's public-facing website by October 3, 2018 (for the second funding cycle), October 3, 2019 (for the third funding cycle), and October 2, 2020 (for the fourth funding cycle and any subsequent funding cycles) stating that: (i) each Indian Tribe, which has not yet been designated a Beneficiary by the Trustee, may seek to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2 by the following deadlines: for the second funding cycle -- December 3, 2018; for the third funding cycle -- December 3, 2019; and for the fourth funding cycle and any subsequent funding cycles -- December 3, 2020; and (ii) the Trustee will determine and post a Notice of Beneficiary Designation of each certifying Indian Tribe by the deadline set in subparagraph 4.0.2, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3.

5.0.5.2.4 5.0.5.2 Four Funding Cycles. The assets in the Tribal Allocation Subaccount shall be committed to Beneficiaries over four funding requests received on each of these six annual funding request deadlines: (i) cycles as follows: (i) no more than one-sixth of total remaining assets in the Tribal Allocation Subaccount may be committed during the first funding cycle; (ii) no more than one-fifth-third of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one-quarter-half of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; (iv) no more

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~~than one third of total remaining assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle; (v) no more than one half of total remaining assets in the Tribal Allocation Subaccount may be committed during the fifth funding cycle; and (vi) the remaining funds in the Tribal Allocation Subaccount may be committed during the sixth~~fourth funding cycle. In the event uncommitted funds remain in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the ~~sixth~~fourth funding cycle, such funds ~~will~~may be ~~made~~made available for ~~up to four additional years or until expended a fifth funding cycle~~up to four additional years or until expended a fifth funding cycle in accordance with the procedure in subparagraphs 5.0.5.2~~3~~4 through 5.0.5.2-~~7~~3. For purposes of this subparagraph 5.0.5.2, “remaining assets” shall mean the amount on deposit in the Tribal Allocation Subaccount on the following dates: (i) December 31, 2017 for the first funding cycle; (ii) December 31, 2018 for the second funding cycle; (iii) December 31, 2019 for the third funding cycle; (iv) December 31, 2020 for the fourth funding cycle; and (v) December 31, 2021 for the fifth funding cycle (if it occurs).

5.0.5.3 In order to ensure an equitable allocation of funds in the event Tribal Allocation Subaccount among Beneficiaries to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, the Trustee shall apply the allocation method set forth below in each funding cycle.

5.0.5.3.1 Group Division Based on 2010 United States Census Table PCT4. The 2010 United States Census Table PCT4 shall provide the only population statistics used for the Indian Tribe Trust Agreement as provided herein, and was used to compile the Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas (Appendix D-8) (“Alignment Table”). For the avoidance of doubt, the population statistics in the Alignment Table shall not be updated or revised for the life of the Indian Tribe Trust Agreement. Based on the 2010 United States Census Table PCT4 and application of a Jenks Grouping algorithm ranking population based on statistical analysis, the Indian Tribes have been divided into three Groups: (1) Group One with a population range of 0 to 16,906; (2) Group Two with a population range of 16,907 to 47,649; and (3) Group Three with a population of 47,650 and above. Group One consists of 558 Tribes, which represent 51.52 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that the total amount of the funding requests received on-align with the list of federally recognized Indian Tribes; Group Two consists of 6 Tribes, which represent 10.61 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; and Group Three consists of 4 Tribes, which represent 37.87 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported

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on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes. This categorization, which is reflected in the Alignment Table (Appendix D-8), shall form the basis for part of the allocation (i.e., the pro rata population-based allocation) in each funding cycle. These three Groups shall not be adjusted except as specifically set forth in the Alignment Table (Appendix D-8) with respect to any submission of new federally recognized Indian Tribes. If any new Indian Tribe is recognized by the United States, in order to participate as a Beneficiary in the Indian Tribe Trust, that Indian Tribe shall file with the Court a Beneficiary Status Certification Form (Appendix D-3), and concurrently deliver to the Trustee a Beneficiary Status Certification Form (Appendix D-3) together with official documentation of such federal recognition as an Indian Tribe by the deadlines set forth in Paragraph 4.0 for the respective funding cycle. For purposes of this Indian Tribe Trust, all new federally recognized Indian Tribes shall be deemed to be members of Group One with a zero population for all funding cycles.

5.0.5.3.2 First Funding Cycle. Twenty-six Indian Tribes, which were designated as Beneficiaries and submitted an approvable funding request by the filing deadline is less than for the first funding cycle, are eligible to participate in the first funding cycle. Within 10 Business Days after the Trust Modification Effective Date, the Trustee shall implement the steps below for the first funding cycle:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the first funding cycle equally among the 26 Beneficiaries participating in the first funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the first funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups (Group One, Group Two, and Group Three), the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Funding Limit. The Trustee shall limit the allocation of funding for a Beneficiary to no more than the amount that the Beneficiary requested in its original EMA Certification Form (Appendix D-4). The Trustee shall reallocate any "overage" among the Beneficiaries in the first funding cycle that did not -- after application of Steps 1 and 2 -- receive the full amount of funding that the Beneficiary had requested in its original EMA Certification Form (Appendix D-4) (the "Remaining

Beneficiaries”). This reallocation of the overage shall be based on each Remaining Beneficiary’s pro rata share of the total amount of funds available to be committed during Indian Tribe population of the corresponding Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.³ The population for each Indian Tribe shall be determined in accordance with the population statistics in the 2010 United States Census Table PCT4 as set forth in the Alignment Table (Appendix D-8).

Step 4: Notice. Within ten Business Days after applying the allocation rules in Steps 1 through 3, the Trustee shall make no adjustments transmit notice to the each of the 26 Beneficiaries via Intralinks regarding the Trustee’s allocation determination of the amount of funding requests before processing available for each Beneficiary.

5.0.5.2.2 Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee a revised EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the first funding requests cycle by submitting a Beneficiary’s Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit a revised EMA Certification Form (Appendix D-4), that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.2.16-0.5.2. The Beneficiary’s revised EMA Certification Form (Appendix D-4) is subject to the Trustee’s approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the first funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the first funding cycle on the Indian Tribe Trust’s public-facing website.

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5.0.5.2.3 In the event that the total amount of the approvable funding requests received on any submission deadline is more than the amount of funds available to be committed during the corresponding funding cycle, the Trustee shall not approve any funding requests pursuant to subparagraph 5.2.16, but rather shall: (i) allocate to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable funding

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³ For example, assume a Beneficiary requested funding of \$200,000 for the first funding cycle, but application of Steps 1 and 2 would result in a projected allocation of \$350,000 for that Beneficiary. The “overage” of \$150,000 would be reallocated among the Remaining Beneficiaries based on each Remaining Beneficiary’s pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.

~~request during the funding cycle a share of the funds available during that funding cycle, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off reservation trust lands, and statistical areas); and (ii) publish on its public-facing website the tribal allocation within 60 Days after the funding request deadline for that funding cycle and notify each tribal applicant by letter and email that the Trustee is prepared to disburse this tribal allocation pursuant to subparagraph 5.2.16.1. In this event, such tribal allocation shall only apply to the over-subscribed funding cycle. To the extent an Indian Tribe has submitted a DERA Notice of Intent to Participate, such notice shall be used to calculate the total amount of funds requested under this subparagraph.~~

5.0.5.3.3 Within 120 Days after the funding request deadline for the sixth funding cycle~~Second through Fourth Funding Cycles. Within 5 Business Days after filing a Notice of Beneficiary Designation pursuant to subparagraph 4.0.2 for the second through fourth funding cycles, the Trustee shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks stating that any Beneficiary that would like to participate in the respective funding cycle shall submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6) by the following deadlines: for the second funding cycle -- March 1, 2019; for the third funding cycle -- March 2, 2020; for the fourth funding cycle -- March 1, 2021. Based on its receipt of timely-filed Designated Beneficiary's Participation Notices (Appendix D-6), the Trustee shall determine the number of participating Beneficiaries for each respective funding cycle, and shall implement the following steps:~~

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses and describes five "Exception Variants" that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an

Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in a given funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after the receipt of Designated Beneficiary's Participation Notices (Appendix D-6) that were timely filed by the deadline for each funding cycle, the Trustee shall apply the allocation rules in Steps 1, 2, and 3 in each funding cycle, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

After the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7) by the following deadlines: May 10, 2019 (for the second funding cycle); May 11, 2020 (for the third funding cycle), and May 10, 2021 (for the fourth funding cycle). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in each funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in that funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.2.45.0.5.3.4 Trustee's Accounting. By August 12, 2021, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously ~~deemed~~designated a Beneficiary hereunder, and publish on its public-facing website, an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs for the Tribal Allocation Subaccount.

The difference between these two amounts shall be referred to as the “Tribal Subaccounts Remainder Balance.” After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by September 13, 2021, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.

5.0.5.3.5 For the seventh Fifth Funding Cycle. In accordance with the procedures set forth in subparagraph 5.0.5.3.4, the Trustee may provide notice to the Beneficiaries via Intralinks that the Tribal Subaccounts Remainder Balance is available for a fifth funding cycle. If there are sufficient funds for the fifth funding cycle, by the funding request deadline of SeptemberDecember 1, 20232021, any Indian Tribe that has been deemed a Beneficiary hereunder and would like to participate in the fifth funding cycle may submit to the Trustee a Designated Beneficiary’s Participation Notice (Appendix D-6). Based on its receipt of timely-filed Designated Beneficiary’s Participation Notices, the Trustee shall determine the number of participating Beneficiaries for the fifth funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the fifth funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the fifth funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) ~~has been deemed a Beneficiary hereunder, or the participating Beneficiary’s~~ population to (ii) ~~the total population of all participating Beneficiaries~~ within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses five Exception Variants that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant

that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in the fifth funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after December 10, 2021, the Trustee shall apply the allocation rules in Steps 1, 2, and 3, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary status pursuant to Paragraph 4.0 and subparagraphs 2.1.2, 4.0.2.1, and 5.0.5.1, may submit to the Trustee a

5.0.5.2.5 Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Action Certification form (Appendix D-4) for Eligible Mitigation Action funding from the Tribal Subaccounts Remainder Balance. Each funding request shall meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the fifth funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the fifth funding cycle on the Indian Tribe Trust's public-facing website.

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5.0.5.2.6 If the total amount of the funding requests received by September 1, 2023, is less than the Tribal Subaccounts Remainder Balance, the Trustee shall make no adjustments to the funding requests before processing funding requests pursuant to subparagraph 5.2.16. If the total amount of the approvable funding requests received by September 1, 2023, exceeds the Tribal Subaccounts Remainder Balance, the Trustee shall: (i) allocate to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable funding request during the seventh funding cycle a share of the Tribal Subaccounts Remainder Balance, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas

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~~of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas); and (ii) publish on its public-facing website the tribal allocation by October 31, 2023.~~

~~5.0.5.2.7— If funds remain in the Tribal Subaccounts Remainder Balance after the seventh funding cycle, any Indian Tribe that: (i) has been deemed a Beneficiary hereunder, or (ii) establishes Beneficiary status pursuant to Paragraph 4.0 and subparagraphs 2.1.2, 4.0.2.1, and 5.0.5.1, may submit to the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) for Eligible Mitigation Action funding from the Tribal Subaccounts Remainder Balance on a “first come, first served” basis until the funds are expended or until the end of the additional four-year period. Each funding request shall meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Uncommitted funds remaining in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after this additional four-year period shall be returned to the Indian Tribe Trust Account and shall be subject to final disposition pursuant to subparagraph 5.4.5.~~

~~5.0.5.35.0.5.4~~ Any Beneficiary may use any share of its allocation for Eligible Mitigation Projects on Indian Land or in areas that are not Indian Land.

5.1 Eligible Mitigation Actions and Expenditures: The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2-~~(Eligible Mitigation Actions and Mitigation Action Expenditures)~~.

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding ~~at any time~~ by filing with the Trustee ~~a Beneficiary Eligible Mitigation Action~~ an EMA Certification Form (Appendix D-4), containing each of the certifications required by subparagraphs 5.2.2 through 5.2.13, as applicable. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 Intentionally Reserved.

5.2.2 A detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits;

5.2.3 An estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;

5.2.4 A project management plan for the proposed Eligible Mitigation Action, including a detailed budget and an implementation and expenditure timeline;

5.2.5 A certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable;

5.2.6 For each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors;

5.2.7 A detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action, including, but not limited to:

5.2.7.1 Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law; and

5.2.7.2 A commitment by the Beneficiary to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the Beneficiary shall make such documentation publicly available;

5.2.8 A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;

5.2.9 A description of how the Beneficiary complied with subparagraph 4.2.8;

5.2.10 If applicable, a description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and

5.2.11 A detailed plan for reporting on Eligible Mitigation Action implementation.

5.2.12 DERA Option. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2, [\(Eligible Mitigation Actions and Mitigation Action Expenditures\)](#), that Beneficiary may use its DERA proposal as support for its funding request for those Eligible Mitigation Actions funded through the DERA Option. [In order to qualify for funding for the DERA Option under Appendix D-2 \(Eligible Mitigation Actions and Mitigation Action Expenditures\), the Beneficiary must deliver a copy of an EPA DERA award letter to the Trustee.](#)

~~5.2.13 Joint Application. Two or more Beneficiaries may submit a joint request for Eligible Mitigation Action funds. Joint applicants shall specify the amount of requested funding that shall be debited against each requesting Beneficiary's allocation.~~

5.2.13 Joint Application. After the requirements of subparagraph 5.0.5 have been satisfied and the Trustee has made its allocation determination of the amount of funding available for each participating Beneficiary in a funding cycle, two or more participating Beneficiaries may submit a joint request to fund an Eligible Mitigation Action using their

combined allocation. In order to submit a Joint Application, each participating Beneficiary must comply with all requirements individually as set forth herein. Upon receipt of the Trustee's allocation determination of available funding pursuant to Step 4 of subparagraphs 5.0.5.3.2, 5.0.5.3.3 or 5.0.5.3.5, each Indian Tribe interested in pursuing a joint request to fund an Eligible Mitigation Action shall complete an individual EMA Certification Form (Appendix D-4) that: (1) cross-references the other interested Indian Tribe's EMA Certification Form (Appendix D-4); (2) makes all the required certifications on behalf of each Indian Tribe individually; and (3) explains how the two individually allocated amounts will be used to jointly fund the Eligible Mitigation Action in that funding cycle. Both individual EMA Certification Forms (Appendix D-4) must be approved in accordance with subparagraph 5.2.16 before any disbursement of funds will be made by the Trustee.

5.2.14 Publication of Funding Requests. The Trustee shall post ~~each funding request~~ on the Indian Tribe Trust's public-facing website ~~upon receipt~~ a copy of each approved EMA Certification Forms (Appendix D-4) and a list of each Beneficiary that filed a Beneficiary's Election to Opt Out Form (Appendix D-7) for each funding cycle 15 Days after the distribution of funds for each funding cycle.

5.2.15 Reliance on Form. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any ~~Beneficiary Eligible Mitigation Action~~ EMA Certification Form (Appendix D-4) reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Indian Tribe Trust Agreement and its Appendices. ~~Within 60 Days after receipt of each Eligible Mitigation Action funding request, the~~ The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information- according to the following schedule: for the first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if a Beneficiary submits a modified EMA Certification Form (Appendix D-4) or additional information, the deadline for the Trustee shall be 30 Days after the last submission of additional information by the Beneficiary. A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2- (Eligible Mitigation Actions and Mitigation Action Expenditures). The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt. Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4- (EMA Certification Form). The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall

be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

5.2.16.1 Disbursement of Funds. ~~The~~Each Beneficiary must complete all required documentation for the Trustee relating to incumbency and its security procedures prior to receiving any funds. Provided these conditions have been met by the Beneficiary, the Trustee shall begin disbursing funds within 15 Days of approval of an Eligible Mitigation Action funding request according to the written instructions and schedule provided by the Beneficiary, unless such date is not a Business Day and then the payment shall be made on the next succeeding Business Day.

5.2.16.2 Publication of Allocated Funds. Within 15 Days after the distribution of funds to Beneficiaries in each funding cycle, the Trustee shall post on the Indian Tribe Trust's public-facing website a listing of the amount received by each Beneficiary for each funding cycle.

5.2.17 Unused Eligible Mitigation Action Funds. Upon the termination or completion of any Eligible Mitigation Action, any unused Eligible Mitigation Action funds shall be returned to the Indian Tribe Mitigation Trust and added back to the Tribal Allocation Subaccount.

5.3 Beneficiary Reporting Obligations: For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to the Trustee a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action. Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2, (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this Paragraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

5.4 Supplemental Funding for Eligible Beneficiaries and Final Disposition of Trust Assets

5.4.1 Intentionally Reserved.

5.4.2 Intentionally Reserved.

5.4.3 Intentionally Reserved.

5.4.4 Intentionally Reserved.

5.4.5 Final Disposition of Indian Tribe Trust Assets. Not later than October 2, 2024, the ~~eleventh~~seventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the ~~eleventh~~seventh anniversary of the Trust Effective Date, any Trust Assets held in the Indian Tribe Trust Account or any subaccount (including, but not limited to, the Tribal Allocation Subaccount and the Tribal Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the Indian Tribe Trust to fund Eligible Mitigation Actions administered by Federal Agencies that have custody, control, or management of land in the United States that is impacted by excess NOx emissions (including, but not limited to, Clean Air Act Class I and II areas) and that have the legal authority to accept such funds, in accordance with instructions to be provided by the United States. If no such Federal Agencies exist, the United States will file a motion, with notice to the Defendants and the Beneficiaries, requesting the Court to order that any Trust Assets held in the Indian Tribe Trust Account (or any subaccount thereof) be distributed either to a governmental unit or to another trust, the income of which is excluded from gross income under the provisions of Internal Revenue Code Section 115, 26 U.S.C. § 115.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Indian Tribe Trust: In accordance with subparagraph 3.1.2.3, the Trustee shall establish and maintain a secure method of internet-based communications, initially Intralinks, for the use of the Trustee and the Beneficiaries that will: (1) enable each Beneficiary to deliver the required documentation under this Indian Tribe Trust Agreement in an electronic format; (2) enable secure communications between the Trustee and each Beneficiary; and (3) provide each Beneficiary with access to its own document base. In addition, each Beneficiary will have the ability to view its own balance in its individual subaccount via the Wilmington Trust Online Portfolio product or a similar product then in use. Any notices required to be provided by the Trustee to the Beneficiaries hereunder shall be deemed to have been properly and sufficiently provided hereunder if the Trustee posts such notice on Intralinks or any successor secure method of internet-based communications in use by the Trustee at that time.

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6.0.1 Addresses for Delivery of Physical Copies of Documentation and Notices.

Indian Tribe Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North

1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

Technical Assistance Provider:

Institute for Tribal Environmental Professionals
Attn: Executive Director
Northern Arizona University
P.O. Box 15004
Flagstaff, AZ 86011-5004

Defendants:

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG

Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Audi AG by mail:

Audi AG
Auto-Union-Strasse 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America, Inc. by mail:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America Chattanooga Operations, LLC by mail:

Volkswagen Group of America Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1
D-70435 Stuttgart
Attention: GR/-Rechtsabteilung/-General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to: offsecy@porsche.us

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Granta Nakayama
Cari Dawson

giuffrar@sullcrom.com
nelless@sullcrom.com
gnakayama@kslaw.com
cari.dawson@alston.com

As to one or more of the Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004

Granta Nakayama
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

Cari Dawson
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

6.1 Jurisdiction: The U.S. District Court for the Northern District of California shall be the sole and exclusive forum for the purposes of enforcing this Indian Tribe Mitigation Trust and resolving disputes hereunder, including the obligations of the Trustee to perform its obligations hereunder, and each of the Consent Decree Parties, the Indian Tribe Mitigation Trust, the Trustee, and each Beneficiary, expressly consents to such jurisdiction.

6.2 Dispute Resolution: Unless otherwise expressly provided for herein, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve any dispute between or among the Indian Tribes, the Consent Decree Parties, and the Trustee arising under or with respect to this Indian Tribe Trust Agreement. [The United States is a necessary party to any Dispute Resolution process under this Indian Tribe Trust.](#)

6.2.1 **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under this Indian Tribe Trust Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the disputing party sends to the counterparty a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the disputing parties cannot resolve the dispute by informal negotiations, then the disputing party may invoke formal dispute resolution procedures as set forth below.

6.2.2 **Formal Dispute Resolution.** The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the disputing party's position and any supporting

documentation and legal authorities relied upon by the disputing party. The counterparty shall serve its Statement of Position within 30 Days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis, or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing parties are unable to consensually resolve the dispute within 30 Days after the counterparty serves its Statement of Position on the disputing party, the disputing party may file with the Court a motion for judicial review of the dispute in accordance with the following subparagraph.

6.2.3 Judicial Review. The disputing party may seek judicial review of the dispute by filing with the Court and serving on the counterparty and the United States, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation, and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Indian Tribe Trust. The counterparty shall respond to the motion within the time period allowed by the Local Rules of the Court, and the disputing party may file a reply memorandum, to the extent permitted by the Local Rules.

6.3 Choice of Law: The validity, interpretation, and performance of this Indian Tribe Mitigation Trust shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. The duties, rights, protections, and immunities of the Trustee, as a trustee of a statutory trust under the Delaware Act, shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. This Indian Tribe Trust Agreement shall not be subject to any provisions of the Uniform Trust Code as adopted by any State, now or in the future. This Indian Tribe Trust Agreement shall be interpreted in a manner that is consistent with the Consent Decree, provided, however, that in the event of a conflict between the Consent Decree and this Indian Tribe Trust Agreement, this Indian Tribe Trust Agreement shall control.

6.4 Waiver of Jury Trial: Each party hereto and each Beneficiary hereof hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Indian Tribe Trust.

6.5 Modification: Material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Indian Tribe Mitigation Trust. Any modification of this Indian Tribe Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the Indian Tribe Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 ([Beneficiary Eligible Mitigation Action](#)EMA Certification [Form](#)) may be made upon written agreement between

the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. To the extent the consent of the Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Defendants, no modification shall: (i) require the Defendants to make any payments to the Indian Tribe Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the Indian Tribe Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Indian Tribe Mitigation Trust, whether material or minor, before such modification shall become effective; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

6.6 Severability: If any provision of this Indian Tribe Trust Agreement or application thereof to any person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Indian Tribe Trust Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Indian Tribe Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

6.7 Taxes: The Indian Tribe Mitigation Trust is intended to be a qualified settlement fund ("QSF") pursuant to Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. The Trustee is intended to be the Indian Tribe Trust's "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The Trustee shall use its best efforts to submit, within six months after the Trust Effective Date, an application and all necessary supporting documentation to the IRS to obtain a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust. Within ten Days after any application has been made to the IRS, the Trustee shall provide a copy of the application and accompanying documentation to the United States (pursuant to subparagraph 6.0.1) and to the known Beneficiaries (pursuant to the secure internet-based communication in Paragraph 6.0). Within seven Days after receipt of any IRS Private Letter Ruling, the Trustee shall provide a copy to the United States (pursuant to subparagraph 6.0.1) and the known Beneficiaries (pursuant to the secure internet-based communication established in Paragraph 6.0). The Trustee shall be responsible for filing all required Tax Returns, ensuring compliance with income tax withholding and reporting requirements, and paying applicable Taxes with respect to the Indian Tribe Trust in a manner consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established pursuant to subparagraph 2.1.5. The Defendants shall provide to the Trustee and the IRS the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Settling Defendants make a transfer to the Indian Tribe Trust.

6.8 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, final reports have been delivered pursuant to Paragraph 3.3 and subparagraph 3.3.1, and notice regarding retained documents has been provided pursuant to subparagraph 3.3.2, the Trustee may file a motion with the Court requesting an order to begin the process under the Delaware Act to terminate this Indian Tribe Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. After the Court approves the motion to terminate, the Trustee shall begin the dissolution and winding up processes under the Delaware Act. On the date that the Trustee completes all the statutory requirements under the Delaware Act and files a certificate of cancellation, this Indian Tribe Trust shall terminate (the “Termination Date”).

6.9 Appendices: The following appendices are attached to and part of the Indian Tribe Trust Agreement:

[Appendix D-1 - Initial Allocation](#)

[Appendix D-1A - Initial 3.0 Liter Allocation](#)

[Appendix D-1B - Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation](#)

[Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures](#)

[Appendix D-3 - Certification for Beneficiary Status under Environmental Mitigation Trust Agreement](#)

[Appendix D-4 - Beneficiary Eligible Mitigation Action Certification](#)

[Appendix D-5 - Form of Certificate of Trust of Volkswagen Diesel Emissions](#)

[Environmental Mitigation Trust for Indian Tribe Beneficiaries](#)

[Appendix D-6 - Designated Beneficiary’s Participation Notice](#)

[Appendix D-7 - Beneficiary’s Election to Opt Out Form](#)

[Appendix D-8 - Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas](#)

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**FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION
TRUST FOR INDIAN TRIBE BENEFICIARIES:**

WILMINGTON TRUST, N.A., AS TRUSTEE FOR THE VOLKSWAGEN DIESEL EMISSIONS
ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES, AND NOT
IN ITS INDIVIDUAL CAPACITY

Date:

David A. Vanaskey, Jr.
Administrative Vice President

By their execution of this Indian Tribe Trust Agreement each undersigned party represents that they are authorized signer for such Company entitled to sign on behalf of each Settling Defendant and that each of the Settling Defendants have taken all necessary corporate actions required to make this a legal, valid and binding obligation of each such Settling Defendant.

FOR VOLKSWAGEN AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

Date

ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
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125 Broad Street
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giuffrar@sullcrom.com
nelles@sullcrom.com
monahanw@sullcrom.com

FOR DR. ING. h.c. F. PORSCHE AG:

Date:

Member of the Executive Board
Research and Development
DR. ING. h.c. [f.f.](#) PORSCHE
AKTIENGESELLSCHAFT
Porschestrasse 911
71287 Weissach, Germany

Date:

ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c. [f.f.](#) PORSCHE
AKTIENGESELLSCHAFT
Porscheplatz 1
70435 Stuttgart-Zuffenhausen, Germany

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date:

JOSEPH S. FOLZ
Vice President, General Counsel and Secretary
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

Date:

GLENN GARDE
Vice President, After Sales
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA,
INC.

Date:

GRANTA NAKAYAMA
JOSEPH A. EISERT
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1700 Pennsylvania Ave., N.W., Suite 200
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Date:

CARI DAWSON
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cari.dawson@alston.com

APPENDIX D-1
Initial 2.0 Liter Allocation

APPENDIX D-1 - INITIAL ALLOCATION

| INITIAL SUBACCOUNTS | INITIAL ALLOCATIONS (\$) | INITIAL ALLOCATIONS (%) |
|---------------------------------------|--------------------------|-------------------------|
| Puerto Rico | \$ 7,500,000.00 | 0.28% |
| North Dakota | \$ 7,500,000.00 | 0.28% |
| Hawaii | \$ 7,500,000.00 | 0.28% |
| South Dakota | \$ 7,500,000.00 | 0.28% |
| Alaska | \$ 7,500,000.00 | 0.28% |
| Wyoming | \$ 7,500,000.00 | 0.28% |
| District of Columbia | \$ 7,500,000.00 | 0.28% |
| Delaware | \$ 9,051,682.97 | 0.34% |
| Mississippi | \$ 9,249,413.91 | 0.34% |
| West Virginia | \$ 11,506,842.13 | 0.43% |
| Nebraska | \$ 11,528,812.23 | 0.43% |
| Montana | \$ 11,600,215.07 | 0.43% |
| Rhode Island | \$ 13,495,136.57 | 0.50% |
| Arkansas | \$ 13,951,016.23 | 0.52% |
| Kansas | \$ 14,791,372.72 | 0.55% |
| Idaho | \$ 16,246,892.13 | 0.60% |
| New Mexico | \$ 16,900,502.73 | 0.63% |
| Vermont | \$ 17,801,277.01 | 0.66% |
| Louisiana | \$ 18,009,993.00 | 0.67% |
| Kentucky | \$ 19,048,080.43 | 0.71% |
| Oklahoma | \$ 19,086,528.11 | 0.71% |
| Iowa | \$ 20,179,540.80 | 0.75% |
| Maine | \$ 20,256,436.17 | 0.75% |
| Nevada | \$ 22,255,715.66 | 0.82% |
| Alabama | \$ 24,084,726.84 | 0.89% |
| New Hampshire | \$ 29,544,297.76 | 1.09% |
| South Carolina | \$ 31,636,950.19 | 1.17% |
| Utah | \$ 32,356,471.11 | 1.20% |
| Indiana | \$ 38,920,039.77 | 1.44% |
| Missouri | \$ 39,084,815.55 | 1.45% |
| Tennessee | \$ 42,407,793.83 | 1.57% |
| Minnesota | \$ 43,638,119.67 | 1.62% |
| Connecticut | \$ 51,635,237.63 | 1.91% |
| Arizona | \$ 53,013,861.68 | 1.96% |
| Georgia | \$ 58,105,433.35 | 2.15% |
| Michigan | \$ 60,329,906.41 | 2.23% |
| Colorado | \$ 61,307,576.05 | 2.27% |
| Wisconsin | \$ 63,554,019.22 | 2.35% |
| New Jersey | \$ 65,328,105.14 | 2.42% |
| Oregon | \$ 68,239,143.96 | 2.53% |
| Massachusetts | \$ 69,074,007.92 | 2.56% |
| Maryland | \$ 71,045,824.78 | 2.63% |
| Ohio | \$ 71,419,316.56 | 2.65% |
| North Carolina | \$ 87,177,373.87 | 3.23% |
| Virginia | \$ 87,589,313.32 | 3.24% |
| Illinois | \$ 97,701,053.83 | 3.62% |
| Washington | \$ 103,957,041.03 | 3.85% |
| Pennsylvania | \$ 110,740,310.73 | 4.10% |
| New York | \$ 117,402,744.86 | 4.35% |
| Florida | \$ 152,379,150.91 | 5.64% |
| Texas | \$ 191,941,816.23 | 7.11% |
| California | \$ 381,280,175.09 | 14.12% |
| Tribal Allocation Subaccount | \$ 49,652,857.71 | 1.84% |
| Trust Administration Cost Subaccount | \$ 23,467,171.38 | 0.87% |
| Tribal Administration Cost Subaccount | \$ 4,525,885.71 | 0.17% |
| | \$ 2,700,000,000.00 | 100.00% |

APPENDIX D-1A
Initial 3.0 Liter Allocation

APPENDIX D-1A – INITIAL 3.0 LITER ALLOCATION

| INITIAL SUBACCOUNTS | INITIAL ALLOCATIONS (\$) | INITIAL ALLOCATIONS (%) |
|---------------------------------------|---------------------------------|--------------------------------|
| Puerto Rico | \$ 625,000.00 | 0.28% |
| North Dakota | \$ 625,000.00 | 0.28% |
| Hawaii | \$ 625,000.00 | 0.28% |
| Mississippi | \$ 625,000.00 | 0.28% |
| West Virginia | \$ 625,000.00 | 0.28% |
| District of Columbia | \$ 625,000.00 | 0.28% |
| South Dakota | \$ 625,000.00 | 0.28% |
| Wyoming | \$ 625,000.00 | 0.28% |
| Alaska | \$ 625,000.00 | 0.28% |
| Delaware | \$ 625,000.00 | 0.28% |
| Arkansas | \$ 696,692.86 | 0.31% |
| Nebraska | \$ 719,535.25 | 0.32% |
| Maine | \$ 796,628.31 | 0.35% |
| Kansas | \$ 870,866.08 | 0.39% |
| Rhode Island | \$ 873,721.37 | 0.39% |
| Vermont | \$ 890,853.17 | 0.40% |
| Montana | \$ 1,002,209.81 | 0.45% |
| Iowa | \$ 1,022,196.90 | 0.45% |
| New Mexico | \$ 1,082,158.17 | 0.48% |
| Idaho | \$ 1,102,145.26 | 0.49% |
| Kentucky | \$ 1,330,569.15 | 0.59% |
| New Hampshire | \$ 1,370,543.33 | 0.61% |
| Alabama | \$ 1,396,241.02 | 0.62% |
| Oklahoma | \$ 1,835,957.01 | 0.82% |
| Louisiana | \$ 1,838,812.30 | 0.82% |
| Indiana | \$ 2,015,840.82 | 0.90% |
| Missouri | \$ 2,067,236.19 | 0.92% |
| South Carolina | \$ 2,258,541.20 | 1.00% |
| Nevada | \$ 2,618,308.82 | 1.16% |
| Utah | \$ 2,821,035.03 | 1.25% |
| Tennessee | \$ 3,352,120.57 | 1.49% |
| Minnesota | \$ 3,363,541.76 | 1.49% |
| Wisconsin | \$ 3,523,438.48 | 1.57% |
| Arizona | \$ 3,646,216.32 | 1.62% |
| Ohio | \$ 3,883,206.11 | 1.73% |
| Connecticut | \$ 4,085,932.31 | 1.82% |
| Michigan | \$ 4,477,108.22 | 1.99% |
| Maryland | \$ 4,668,413.23 | 2.07% |
| Oregon | \$ 4,728,374.50 | 2.10% |
| North Carolina | \$ 4,868,284.13 | 2.16% |
| Georgia | \$ 5,519,292.21 | 2.45% |
| Massachusetts | \$ 5,990,416.48 | 2.66% |
| Virginia | \$ 6,044,667.16 | 2.69% |
| New Jersey | \$ 6,886,980.25 | 3.06% |
| Colorado | \$ 7,432,342.28 | 3.30% |
| Pennsylvania | \$ 7,829,228.79 | 3.48% |
| Washington | \$ 8,788,609.12 | 3.91% |
| New York | \$ 10,299,062.08 | 4.58% |
| Illinois | \$ 10,978,623.15 | 4.88% |
| Florida | \$ 13,899,593.63 | 6.18% |
| Texas | \$ 17,377,347.34 | 7.72% |
| California | \$ 41,356,145.05 | 18.38% |
| Tribal Allocation Subaccount | \$ 4,795,063.51 | 2.13% |
| Trust Administration Cost Subaccount | \$ 1,955,597.62 | 0.87% |
| Tribal Administration Cost Subaccount | \$ 390,303.65 | 0.17% |
| Grand Total | \$ \$ 225,000,000.00 | 100.00% |

APPENDIX D-1B

Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Weighted Average Allocation Formula:

$$(2.0 \text{ Allocation}_{\text{Subaccount}} + 3.0 \text{ Allocation}_{\text{Subaccount}}) / (\$2,700,000,000 + \$225,000,000)$$

where Subaccount represents an individual Beneficiary subaccount or the Tribal, Administration Cost, or Tribal Administration Cost subaccount.

| State Trust Allocation | Appendix D-1 | | Appendix D-1A | | Appendix D-1B | |
|--|-----------------------------|---------------------------------|-----------------------------|---------------------------------|---------------------------|--|
| | 2.0 Liter Allocation Amount | 2.0 Liter Allocation Percentage | 3.0 Liter Allocation Amount | 3.0 Liter Allocation Percentage | Total Allocation Amount | Weighted Average Allocation Percentage |
| Puerto Rico | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| North Dakota | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| Hawaii | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| South Dakota | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| Alaska | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| Wyoming | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| District of Columbia | \$7,500,000.00 | 0.28% | \$625,000.00 | 0.28% | \$8,125,000.00 | 0.28% |
| Delaware | \$9,051,682.97 | 0.34% | \$625,000.00 | 0.28% | \$9,676,682.97 | 0.33% |
| Mississippi | \$9,249,413.91 | 0.34% | \$625,000.00 | 0.28% | \$9,874,413.91 | 0.34% |
| West Virginia | \$11,506,842.13 | 0.43% | \$625,000.00 | 0.28% | \$12,131,842.13 | 0.41% |
| Nebraska | \$11,528,812.23 | 0.43% | \$719,535.25 | 0.32% | \$12,248,347.48 | 0.42% |
| Montana | \$11,600,215.07 | 0.43% | \$1,002,209.81 | 0.45% | \$12,602,424.88 | 0.43% |
| Rhode Island | \$13,495,136.57 | 0.50% | \$873,721.37 | 0.39% | \$14,368,857.94 | 0.49% |
| Arkansas | \$13,951,016.23 | 0.52% | \$696,692.86 | 0.31% | \$14,647,709.09 | 0.50% |
| Kansas | \$14,791,372.72 | 0.55% | \$870,866.08 | 0.39% | \$15,662,238.80 | 0.54% |
| Idaho | \$16,246,892.13 | 0.60% | \$1,102,145.26 | 0.49% | \$17,349,037.39 | 0.59% |
| New Mexico | \$16,900,502.73 | 0.63% | \$1,082,158.17 | 0.48% | \$17,982,660.90 | 0.61% |
| Vermont | \$17,801,277.01 | 0.66% | \$890,853.17 | 0.40% | \$18,692,130.18 | 0.64% |
| Louisiana | \$18,009,993.00 | 0.67% | \$1,838,812.30 | 0.82% | \$19,848,805.30 | 0.68% |
| Kentucky | \$19,048,080.43 | 0.71% | \$1,330,569.15 | 0.59% | \$20,378,649.58 | 0.70% |
| Oklahoma | \$19,086,528.11 | 0.71% | \$1,835,957.01 | 0.82% | \$20,922,485.12 | 0.72% |
| Iowa | \$20,179,540.80 | 0.75% | \$1,022,196.90 | 0.45% | \$21,201,737.70 | 0.72% |
| Maine | \$20,256,436.17 | 0.75% | \$796,628.31 | 0.35% | \$21,053,064.48 | 0.72% |
| Nevada | \$22,255,715.66 | 0.82% | \$2,618,308.82 | 1.16% | \$24,874,024.48 | 0.85% |
| Alabama | \$24,084,726.84 | 0.89% | \$1,396,241.02 | 0.62% | \$25,480,967.86 | 0.87% |
| New Hampshire | \$29,544,297.76 | 1.09% | \$1,370,543.33 | 0.61% | \$30,914,841.09 | 1.06% |
| South Carolina | \$31,636,950.19 | 1.17% | \$2,258,541.20 | 1.00% | \$33,895,491.39 | 1.16% |
| Utah | \$32,356,471.11 | 1.20% | \$2,821,035.03 | 1.25% | \$35,177,506.14 | 1.20% |
| Indiana | \$38,920,039.77 | 1.44% | \$2,015,840.82 | 0.90% | \$40,935,880.59 | 1.40% |
| Missouri | \$39,084,815.55 | 1.45% | \$2,067,236.19 | 0.92% | \$41,152,051.74 | 1.41% |
| Tennessee | \$42,407,793.83 | 1.57% | \$3,352,120.57 | 1.49% | \$45,759,914.40 | 1.56% |
| Minnesota | \$43,638,119.67 | 1.62% | \$3,363,541.76 | 1.49% | \$47,001,661.43 | 1.61% |
| Connecticut | \$51,635,237.63 | 1.91% | \$4,085,932.31 | 1.82% | \$55,721,169.94 | 1.90% |
| Arizona | \$53,013,861.68 | 1.96% | \$3,646,216.32 | 1.62% | \$56,660,078.00 | 1.94% |
| Georgia | \$58,105,433.35 | 2.15% | \$5,519,292.21 | 2.45% | \$63,624,725.56 | 2.18% |
| Michigan | \$60,329,906.41 | 2.23% | \$4,477,108.22 | 1.99% | \$64,807,014.63 | 2.22% |
| Colorado | \$61,307,576.05 | 2.27% | \$7,432,342.28 | 3.30% | \$68,739,918.33 | 2.35% |
| Wisconsin | \$63,554,019.22 | 2.35% | \$3,523,438.48 | 1.57% | \$67,077,457.70 | 2.29% |
| New Jersey | \$65,328,105.14 | 2.42% | \$6,886,980.25 | 3.06% | \$72,215,085.39 | 2.47% |
| Oregon | \$68,239,143.96 | 2.53% | \$4,728,374.50 | 2.10% | \$72,967,518.46 | 2.49% |
| Massachusetts | \$69,074,007.92 | 2.56% | \$5,990,416.48 | 2.66% | \$75,064,424.40 | 2.57% |
| Maryland | \$71,045,824.78 | 2.63% | \$4,668,413.23 | 2.07% | \$75,714,238.01 | 2.59% |
| Ohio | \$71,419,316.56 | 2.65% | \$3,883,206.11 | 1.73% | \$75,302,522.67 | 2.57% |
| North Carolina | \$87,177,373.87 | 3.23% | \$4,868,284.13 | 2.16% | \$92,045,658.00 | 3.15% |
| Virginia | \$87,589,313.32 | 3.24% | \$6,044,667.16 | 2.69% | \$93,633,980.48 | 3.20% |
| Illinois | \$97,701,053.83 | 3.62% | \$10,978,623.15 | 4.88% | \$108,679,676.98 | 3.72% |
| Washington | \$103,957,041.03 | 3.85% | \$8,788,609.12 | 3.91% | \$112,745,650.15 | 3.85% |
| Pennsylvania | \$110,740,310.73 | 4.10% | \$7,829,228.79 | 3.48% | \$118,569,539.52 | 4.05% |
| New York | \$117,402,744.86 | 4.35% | \$10,299,062.08 | 4.58% | \$127,701,806.94 | 4.37% |
| Florida | \$152,379,150.91 | 5.64% | \$13,899,593.63 | 6.18% | \$166,278,744.54 | 5.68% |
| Texas | \$191,941,816.23 | 7.11% | \$17,377,347.34 | 7.72% | \$209,319,163.57 | 7.16% |
| California | \$381,280,175.09 | 14.12% | \$41,356,145.05 | 18.38% | \$422,636,320.14 | 14.45% |
| State Trust Administration Cost Subaccount | \$23,467,171.38 | 0.87% | \$1,955,597.62 | 0.87% | \$25,422,769.00 | 0.87% |
| Subtotal | \$2,645,821,256.54 | 97.99% | \$219,814,632.84 | 97.70% | \$2,865,635,889.38 | 97.97% |
| Tribal Trust Allocation | \$49,652,857.71 | 1.84% | \$4,795,063.51 | 2.13% | \$54,447,921.22 | 1.86% |
| Tribal Administration Cost Subaccount | \$4,525,885.77 | 0.17% | \$390,303.65 | 0.17% | \$4,916,189.42 | 0.17% |
| Subtotal | \$54,178,743.48 | 2.01% | \$5,185,367.16 | 2.30% | \$59,364,110.64 | 2.03% |
| Total | \$2,700,000,000.00 | 100.00% | \$225,000,000.00 | 100.00% | \$2,925,000,000.00 | 100.00% |

APPENDIX D-2
Eligible Mitigation Actions and Mitigation Action Expenditures

APPENDIX D-2

ELIGIBLE MITIGATION ACTIONS AND MITIGATION ACTION EXPENDITURES

1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

- a. Eligible Large Trucks include 1992-2009 engine model year Class 8 Local Freight or Drayage. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Large Trucks shall also include 2010-2012 engine model year Class 8 Local Freight or Drayage.
- b. Eligible Large Trucks must be Scrapped.
- c. Eligible Large Trucks may be Repowered with any new diesel or Alternate Fueled engine or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Large Trucks Mitigation Action occurs or one engine model year prior.
- d. For Non-Government Owned Eligible Class 8 Local Freight Trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
- e. For Non-Government Owned Eligible Drayage Trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 2. Up to 50% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 4. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
- f. For Government Owned Eligible Class 8 Large Trucks, Beneficiaries may draw funds from the Trust in the amount of:
1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
2. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)
- a. Eligible Buses include 2009 engine model year or older class 4-8 school buses, shuttle buses, or transit buses. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year buses at the time of the proposed Eligible Mitigation Action, Eligible Buses shall also include 2010-2012 engine model year class 4-8 school buses, shuttle buses, or transit buses.
 - b. Eligible Buses must be Scrapped.
 - c. Eligible Buses may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior.
 - d. For Non-Government Owned Buses, Beneficiaries may draw funds from the Trust in the amount of:
 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
- e. For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:
1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

3. Freight Switchers

- a. Eligible Freight Switchers include pre-Tier 4 switcher locomotives that operate 1000 or more hours per year.
- b. Eligible Freight Switchers must be Scrapped.
- c. Eligible Freight Switchers may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Freight Switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.
- d. For Non-Government Owned Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of :
 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
 2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.

3. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).
 4. Up to 75% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.
- e. For Government Owned Eligible Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of:
1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
 2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.
 3. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).
 4. Up to 100% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

4. Ferries/Tugs

- a. Eligible Ferries and/or Tugs include unregulated, Tier 1, or Tier 2 marine engines.
- b. Eligible Ferry and/or Tug engines that are replaced must be Scrapped.
- c. Eligible Ferries and/or Tugs may be Repowered with any new Tier 3 or Tier 4 diesel or Alternate Fueled engines, or with All-Electric engines, or may be upgraded with an EPA Certified Remanufacture System or an EPA Verified Engine Upgrade.
- d. For Non-Government Owned Eligible Ferries and/or Tugs, Beneficiaries may only draw funds from the Trust in the amount of:
 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).
 2. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

- e. For Government Owned Eligible Ferries and/or Tugs, Beneficiaries may draw funds from the Trust in the amount of:
 - 1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).
 - 2. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

5. Ocean Going Vessels (OGV) Shorepower

- a. Eligible Marine Shorepower includes systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth. Components of such systems eligible for reimbursement are limited to cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Marine shore power systems must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems) and should be supplied with power sourced from the local utility grid. Eligible Marine Shorepower includes equipment for vessels that operate within the Great Lakes.
- b. For Non-Government Owned Marine Shorepower, Beneficiaries may only draw funds from the Trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.
- c. For Government Owned Marine Shorepower, Beneficiaries may draw funds from the Trust in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

6. Class 4-7 Local Freight Trucks (Medium Trucks)

- a. Eligible Medium Trucks include 1992-2009 engine model year class 4-7 Local Freight trucks, and for Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Trucks shall also include 2010-2012 engine model year class 4-7 Local Freight trucks.
- b. Eligible Medium Trucks must be Scrapped.

- c. Eligible Medium Trucks may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Medium Trucks Mitigation Action occurs or one engine model year prior.
- d. For Non-Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:
 - 1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 - 2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 - 3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 - 4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
- e. For Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:
 - 1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
 - 2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 - 3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
 - 4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

7. Airport Ground Support Equipment

- a. Eligible Airport Ground Support Equipment includes:
 - 1. Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and
 - 2. Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engine powered airport ground support equipment.
- b. Eligible Airport Ground Support Equipment must be Scrapped.

- c. Eligible Airport Ground Support Equipment may be Repowered with an All-Electric engine, or may be replaced with the same Airport Ground Support Equipment in an All-Electric form.
- d. For Non-Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may only draw funds from the Trust in the amount of:
 - 1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.
 - 2. Up to 75% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.
- e. For Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may draw funds from the Trust in the amount of:
 - 1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.
 - 2. Up to 100% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

8. Forklifts and Port Cargo Handling Equipment

- a. Eligible Forklifts includes forklifts with greater than 8000 pounds lift capacity.
- b. Eligible Forklifts and Port Cargo Handling Equipment must be Scrapped.
- c. Eligible Forklifts and Port Cargo Handling Equipment may be Repowered with an All-Electric engine, or may be replaced with the same equipment in an All-Electric form.
- d. For Non-Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:
 - 1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.
 - 2. Up to 75% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.
- e. For Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.
 2. Up to 100% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.
9. Light Duty Zero Emission Vehicle Supply Equipment. Each Beneficiary may use up to fifteen percent (15%) of its allocation of Trust Funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Provided, however, that Trust Funds shall not be made available or used to purchase or rent real-estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).
- a. Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).
 - b. Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) that is located in a public place.
 - c. Subject to the 15% limitation above, each Beneficiary may draw funds from the Trust in the amount of:
 1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government Owned Property.
 2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Non-Government Owned Property.
 3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.
 4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

5. Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be available to the public.
 6. Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be available to the public.
10. Diesel Emission Reduction Act (DERA) Option. Beneficiaries may use Trust Funds for their non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133), or Section 792 (codified at 42 U.S.C. § 16132) in the case of Tribes, thereby allowing Beneficiaries to use such Trust Funds for actions not specifically enumerated in this Appendix D-2, but otherwise eligible under DERA pursuant to all DERA guidance documents available through the EPA. Trust Funds shall not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

Eligible Mitigation Action Administrative Expenditures

For any Eligible Mitigation Action, Beneficiaries may use Trust Funds for actual administrative expenditures (described below) directly associated with implementing such Eligible Mitigation Action, but not to exceed 15% of the total cost of such Eligible Mitigation Action. The 15% cap includes the aggregated amount of eligible administrative expenditures incurred by the Beneficiary and any third-party contractor(s). In the project management plan for any proposed Eligible Mitigation Action submitted under subparagraph 5.2.4 of the Indian Tribe Trust Agreement, Beneficiaries shall include a detailed budget specifying the funds allocated for administrative expenditures as well as an implementation and expenditure timeline. For any contracted services, the budget shall include detailed cost estimates from selected or potential vendors. If the contracted services are billed on an hourly basis, the cost estimate shall include a detailed description of the services provided or to be provided, the number of hours, and the cost per hour. Administrative expenditures may include incurred costs that are directly connected with funding project development and solicitation for an Eligible Mitigation Action. Administrative expenditures shall not include: (1) any amount incurred or billed prior to October 2, 2017 (the Trust Effective Date), for contracted services by any third party service provider or third party contractor, including, but not limited to, lawyers or law firms, accountants or accounting firms, consultants, or other similar third party service providers; (2) any contingency fees for contracted services including, but not limited to, evaluation, consulting, legal services or other professional services; (3) any expenses incurred for preparation of a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3); (4) any expenses incurred for dispute resolution, including for judicial review of the dispute, under Paragraph 6.2 of the Indian Tribe Trust Agreement; and (5) any expenses incurred for judicial challenges or claims brought by any Beneficiary under the Indian Tribe Trust.

Administrative expenditures for Beneficiaries include the following:

1. Personnel including costs of employee salaries and wages, but not consultants.
2. Fringe Benefits including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes.
3. Travel including costs of Mitigation Action-related travel by program staff, but does not include consultant travel.
4. Supplies including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs.
5. Contractual including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included.
6. Construction including costs associated with ordinary or normal rearrangement and alteration of facilities.
7. Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.

Definitions/Glossary of Terms

“Airport Ground Support Equipment” shall mean vehicles and equipment used at an airport to service aircraft between flights.

“All-Electric” shall mean powered exclusively by electricity provided by a battery, fuel cell, or the grid.

“Alternate Fueled” shall mean an engine, or a vehicle or piece of equipment that is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric Hybrid).

“Certified Remanufacture System or Verified Engine Upgrade” shall mean engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.

“Class 4-7 Local Freight Trucks (Medium Trucks)” shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs.

“Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)” shall mean vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 14,001 lbs. used for transporting people. See definition for School Bus below.

“Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)” shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs. used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

“CNG” shall mean Compressed Natural Gas.

“Drayage Trucks” shall mean trucks hauling cargo to and from ports and intermodal rail yards.

“Forklift” shall mean nonroad equipment used to lift and move materials short distances; generally includes tines to lift objects. Eligible types of forklifts include reach stackers, side loaders, and top loaders.

“Freight Switcher” shall mean a locomotive that moves rail cars around a rail yard as compared to a line-haul engine that moves freight long distances.

“Generator Set” shall mean a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

“Government” shall mean a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native

village. The term “State” means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Gross Vehicle Weight Rating (GVWR)” shall mean the maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo.

- Class 1: < 6000 lb.
- Class 2: 6001-10,000 lb.
- Class 3: 10,001-14,000 lb.
- Class 4: 14,001-16,000 lb.
- Class 5: 16,001-19,500 lb.
- Class 6: 19,501-26,000 lb.
- Class 7: 26,001-33,000 lb.
- Class 8: > 33,001 lb.

“Hybrid” shall mean a vehicle that combines an internal combustion engine with a battery and electric motor.

“Infrastructure” shall mean the equipment used to enable the use of electric powered vehicles (e.g., electric vehicle charging station).

“Intermodal Rail Yard” shall mean a rail facility in which cargo is transferred from drayage truck to train or vice-versa.

“Port Cargo Handling Equipment” shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.

“Plug-in Hybrid Electric Vehicle (PHEV)” shall mean a vehicle that is similar to a Hybrid but is equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows the car to be driven on a combination of electric and gasoline fuels.

“Repower” shall mean to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (e.g., grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.

“School Bus” shall mean a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

“Scrapped” shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, Scrapped shall also include the disabling of the chassis by cutting the vehicle’s frame rails completely in half.

“Tier 0, 1, 2, 3, 4” shall refer to corresponding EPA engine emission classifications for nonroad, locomotive, and marine engines.

“Tugs” shall mean dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (e.g., tugboats and towboats).

“Zero Emission Vehicle (ZEV)” shall mean a vehicle that produces no emissions from the on-board source of power (e.g., All-Electric or hydrogen fuel cell vehicles).

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

**CERTIFICATION FOR BENEFICIARY STATUS
UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT**

1. Identity of Lead Agency

_____ (“Beneficiary”), by and through the Office of the Governor (or the analogous Chief Executive) of the Indian Tribe on whose behalf the Certification Form is submitted: (i) hereby identifies _____ (“Lead Agency”) as the Lead Agency for purposes of the Beneficiary’s participation in the Environmental Mitigation Trust (“Trust”) as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY’S LEAD AGENCY CONTACT INFORMATION:

| | |
|-----------------|--|
| Contact: | |
| Address: | |
| Phone: | |
| Fax: | |
| Email: | |

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement (“Trust Agreement”). The Beneficiary’s agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary agrees, without limitation, that any and all future modifications to the Indian Tribe Trust Agreement done in accordance with the Paragraph 6.5 of the Indian Tribe Trust Agreement shall automatically bind the Beneficiary to the Indian Tribe Trust Agreement without any further action on behalf of the Beneficiary. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; and (iii) prior to requesting any funds from the Trust, the Beneficiary has obtained full legal authority to receive and/or direct payments of such funds. If the Beneficiary fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary under the Trust Agreement until it has obtained such legal authority.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Tribal Allocation Subaccount.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

7. Publicly Available Information

The Beneficiary certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; and (ii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:
 - i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
 - ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
 - iii. Other emissions-related vehicle characteristics that result from the modification; or

iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or the analogous Chief Executive):

Signature: _____
Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____
Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____

APPENDIX D-4
Beneficiary Eligible Mitigation Action Certification

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary _____

Lead Agency Authorized to Act on Behalf of the Beneficiary _____
(Any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency)

| | |
|---|---|
| Action Title: | |
| Beneficiary's Project ID: | |
| Funding Request No. | <i>(sequential)</i> |
| Request Type: (select one or more) | <input type="checkbox"/> Reimbursement <input type="checkbox"/> Advance <input type="checkbox"/> Other (specify): _____ |
| Payment to be made to: (select one or more) | <input type="checkbox"/> Beneficiary <input type="checkbox"/> Other (specify): _____ |
| Funding Request & Direction (Attachment A) | <input type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately |

SUMMARY

| |
|---|
| Eligible Mitigation Action <input type="checkbox"/> Appendix D-2 item (specify): _____ Action Type <input type="checkbox"/> Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal): _____ |
| Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2): |
| Estimate of Anticipated NOx Reductions (5.2.3): |
| Identification of Governmental Entity Responsible for Reviewing and Auditing Expenditures of Eligible Mitigation Action Funds to Ensure Compliance with Applicable Law (5.2.7.1): |
| Describe how the Beneficiary will make documentation publicly available (5.2.7.2). |
| Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8). |
| Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9). |

If applicable, describe how the mitigation action will mitigate the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).

ATTACHMENTS
(CHECK BOX IF ATTACHED)

- Attachment A Funding Request and Direction.
- Attachment B Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4).
- Attachment C Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).
- Attachment D Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding \$25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding \$25,000.]
- Attachment E DERA Option (5.2.12). [Attach only if using DERA option.]
- Attachment F Attachment specifying amount of requested funding to be debited against each beneficiary's allocation (5.2.13). [Attach only if this is a joint application involving multiple beneficiaries.]

CERTIFICATIONS

By submitting this application, the Lead Agency makes the following certifications:

1. This application is submitted on behalf of Beneficiary _____, and the person executing this certification has authority to make this certification on behalf of the Lead Agency and Beneficiary, pursuant to the Certification for Beneficiary Status filed with the Court.
2. Beneficiary requests and directs that the Trustee make the payments described in this application and Attachment A to this Form.
3. This application contains all information and certifications required by Paragraph 5.2 of the Trust Agreement, and the Trustee may rely on this application, Attachment A, and related certifications in making disbursements of trust funds for the aforementioned Project ID.
4. Any vendors were or will be selected in accordance with a jurisdiction's public contracting law as applicable. (5.2.5)
5. Beneficiary will maintain and make publicly available all documentation submitted in

support of this funding request and all records supporting all expenditures of eligible mitigation action funds subject to applicable laws governing the publication of confidential business information and personally identifiable information. (5.2.7.2)

DATED: _____

[NAME]

[TITLE]

[LEAD AGENCY]

for

[BENEFICIARY]

ATTACHMENT A

FUNDING REQUEST AND DIRECTION

(Attachment to Appendix D-4, Beneficiary Eligible Mitigation Action Certification, pursuant to Paragraph 5.2 of the Environmental Mitigation Trust Agreement)

Pursuant to the authority granted to _____ [insert Lead Agency] to act on behalf of Beneficiary _____ under the Mitigation Trust, [Lead Agency] directs the Trustee to make the following payments from its subaccount no. _____ to the following payees, for the amounts specified on the dates specified below.

LEAD AGENCY INFORMATION

| | |
|----------------------------|-----------------------------------|
| Beneficiary Name: _____ | Lead Agency Contact Person: _____ |
| Lead Agency Name: _____ | Lead Agency Email Address: _____ |
| Lead Agency Address: _____ | Lead Agency Fax: _____ |
| Lead Agency Phone: _____ | Lead Agency TIN: _____ |

Contact information entered above may correspond to Lead Agency or any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency

MITIGATION ACTION INFORMATION

| | |
|---------------------------------|---------------------------|
| Action Title: _____ | Funding Request No: _____ |
| Beneficiary's Project ID: _____ | |

PAYMENTS REQUESTED

(attach additional pages if needed)

| Amount | Requested Date | Payee | Request Type |
|---------------|-----------------------|--------------|---------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PAYEE CONTACT AND WIRE INFORMATION

(fill out both tables below for each payee and payment identified in "Payments Requested" table on p. 1; attach additional pages if needed)

PAYEE CONTACT INFORMATION

| | |
|----------------------|-------------------------------|
| Action Title: _____ | Beneficiary Project ID: _____ |
| Payee Name: _____ | Payee Contact Person: _____ |
| Payee Address: _____ | Payee Email Address: _____ |
| Payee Phone: _____ | Payee Fax: _____ |
| Payee TIN: _____ | |

| Payment Amount | Requested Date | Request Type |
|----------------|----------------|--------------|
| | | |

WIRE INFORMATION

| | | | |
|---------------------------------|--|-------|--|
| Receiving Bank Name: | _____ | | |
| Receiving Bank Branch: | _____ | | |
| Receiving Bank Address: | _____ | | |
| Bank Swift ID: | <table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none;">_____</td> <td style="width:50%; border: none;">National Routing No. / Bank ABA Number <i>(Sort Code, BLZ)</i></td> </tr> </table> | _____ | National Routing No. / Bank ABA Number <i>(Sort Code, BLZ)</i> |
| _____ | National Routing No. / Bank ABA Number <i>(Sort Code, BLZ)</i> | | |
| Amount of Wire: | _____ | | |
| Message to Payee: | _____ _____ | | |
| Instructions to Receiving Bank: | _____ _____ | | |
| For Credit to: | _____ _____ | | |
| Other Special Instructions: | _____ _____ | | |

[Signature Block]

[SAMPLE ATTACHMENT B - USE OF THIS FORMAT IS NOT MANDATORY]**PROJECT MANAGEMENT PLAN**
PROJECT SCHEDULE AND MILESTONES

| Milestone | Date |
|---|-------------|
| Lead Agency Provides Notice of Availability of Mitigation Action Funds | |
| Project Sponsor Submits Proposal to Lead Agency | |
| Lead Agency Provides Written Approval of Project Sponsor's Proposal | |
| Lead Agency Incorporates Project Sponsor's Proposal into Mitigation Plan | |
| Trustee Acknowledges Receipt of Project Certification and Funding Direction | |
| Trustee Allocates Share of Funds for Approved Project | |
| Lead Agency Directs Funding (Advance Funded Projects) | |
| Project Sponsor Obtains Cost Share, Notifies or Certifies to Lead Agency | |
| Project Sponsor Enters into Contracts, Purchase Orders, etc. - Start | |
| Project Sponsor Enters into Contracts, Purchase Orders, etc. - Complete | |
| Project Installation(s) – Start | |
| Project Installation(s) – Complete | |
| Project Sponsor provides detailed invoices for all claimed project costs, documentation for emission reduction estimates, required certification documents to Lead Agency to support direction to Trustee for Payment (Reimbursement, Direct-to-Vendor) or final accounting (Forward Funded Projects) | - |
| Lead Agency completes review and certifies payment direction to Trustee (Reimbursement) | |
| Trustee Acknowledges Receipt of Direction for Payment(s) (Advance Funded, Reimbursement) | - |
| Project Sponsor Certifies Project Completion | |
| Lead Agency Reports Project Completion | |

PROJECT BUDGET

| Period of Performance: _____ | | | | |
|---|------------------------------|--|--|--|
| Budget Category | Total Approved Budget | Share of Total Budget to be Funded by the Trust | Cost-Share, if applicable (Entity #1) | Cost-Share, if applicable (Entity #2) |
| 1. Equipment Expenditure | \$ | \$ | \$ | \$ |
| 2. Contractor Support <i>(Provide List of Approved Contractors as Attachment with approved funding ceilings)</i> | \$ | \$ | \$ | \$ |
| 3. Subrecipient Support <i>(Provide List of Approved Subrecipients or Grant Awardees as Attachment with approved funding ceilings)</i> | \$ | \$ | \$ | \$ |
| 4. Administrative ¹ | \$ | \$ | \$ | \$ |
| Project Totals | \$ | \$ | \$ | \$ |
| Percentage | % | % | % | % |

¹ Subject to Appendix D-2 15% administrative cap.

PROJECTED TRUST ALLOCATIONS:

| | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|
| 1. Anticipated Annual Project Funding Request to be paid through the Trust | \$ | \$ | \$ | \$ | \$ |
| 2. Anticipated Annual Cost Share | \$ | \$ | \$ | \$ | \$ |
| 3. Anticipated Total Project Funding by Year (line 1 plus line 2) | \$ | \$ | \$ | \$ | \$ |
| 4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation | \$ | \$ | \$ | \$ | \$ |
| 5. Current Beneficiary Project Funding to be paid through the Trust (line 1) | \$ | \$ | \$ | \$ | \$ |
| 6. Total Funding Allocated to for Beneficiary, inclusive of Current Action by Year (line 4 plus line 5) | \$ | \$ | \$ | \$ | \$ |
| 7. Beneficiary Share of Estimated Funds Remaining in Trust | \$ | \$ | \$ | \$ | \$ |
| 8. Net Beneficiary Funds Remaining in Trust, net of cumulative Beneficiary Funding Actions (line 7 minus line 6) | \$ | \$ | \$ | \$ | \$ |

APPENDIX D-5
Form of Certificate of Trust of the
Volkswagen Diesel Emissions Environmental Mitigation Trust
for Indian Tribe Beneficiaries

APPENDIX D-5

**FORM OF CERTIFICATE OF TRUST OF THE
VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST
FOR INDIAN TRIBE BENEFICIARIES**

This Certificate of Trust of the Volkswagen Diesel Emissions Environmental Mitigation Trust for (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as Trustee, to form a statutory trust under the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826 (the "Act").

1. Name. The name of the statutory trust formed by this Certificate of Trust is the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.

2. Delaware Trustee. The name and business address of the Trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust, N.A., 1100 North Market Street, Wilmington, Delaware 19890. Attn: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

4. IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

WILMINGTON TRUST, N.A.,
not in its individual capacity but solely
as Trustee

By: _____
Name:
Title:

APPENDIX D-6

Designated Beneficiary's Participation Notice

APPENDIX D-6

Designated Beneficiary's Participation Notice

_____ (“Beneficiary”), by and through _____, the Lead Agency with the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”), hereby provides notice to the Trustee that the Beneficiary intends to participate in the _____ funding cycle of the Trust Agreement.

The Beneficiary acknowledges that providing this Notice to the Trustee does not entitle the Beneficiary to any funds unless and until it satisfies all of the requirements set forth in the Indian Tribe Trust Agreement, including, without limitation, Section V (Allocation of Indian Tribe Mitigation Trust Assets) and all paragraphs and subparagraphs thereof, in connection with the submission of funding requests.

The Beneficiary further acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying on, this Appendix D-6 Notice.

DATED: _____

[NAME]

[TITLE]

[LEAD AGENCY]

for

[BENEFICIARY]

APPENDIX D-7

Beneficiary's Election to Opt Out Form

APPENDIX D-7

Beneficiary's Election to Opt Out Form

_____ (“Beneficiary”), by and through _____, the Lead Agency with the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”), hereby provides notice to the Trustee that the Beneficiary elects to opt out of the _____ funding cycle of the Trust Agreement.

The Beneficiary acknowledges that the submittal of this Beneficiary's Election to Opt Out Form to the Trustee means that: (1) the Beneficiary will not receive any funds in the funding cycle identified above; and (2) the Beneficiary has no right or entitlement to the funds identified by the Trustee as available to the Beneficiary for the funding cycle identified above.

The Beneficiary further acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying on, this Appendix D-7 Election.

DATED: _____

[NAME]

[TITLE]

[LEAD AGENCY]

for

[BENEFICIARY]

APPENDIX D-8

**Alignment Table of Federally Recognized Indian Tribes to 2010 U.S.
Geographic Census Areas**

APPENDIX D-8

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas

Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018) (“Federal Register List”). The 2010 United States Census published Table PCT4, which reported the total American Indian and Alaska Native population of American Indian and Alaska Native geographic census areas, including reservations, off-reservation trust lands, and statistical areas. This Appendix D-8 includes an Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups (the “Alignment Table”) that aligns federally recognized Indian Tribes on the Federal Register List with geographic census areas from the 2010 United States Census, and provides a crosswalk between the federally recognized Indian Tribes and the total population values reported in the 2010 United States Census Table PCT4. This information, which is included on the Alignment Table, shall be used to identify the population of each Indian Tribe for the purposes of the Indian Tribe Trust Agreement (“Trust Agreement”). In particular, this information shall be used to determine the pro rata population-based allocation in each funding cycle of the Trust Agreement consistent with subparagraph 5.0.5.3 of the Trust Agreement.

An alignment of the current Federal Register List of Indian Tribes with Table PCT4 of the 2010 United States Census raised five issues (“Exception Variants”) that are discussed below. In addition, some Indian Tribes may be federally recognized to exist as Indian Tribes after publication of the Federal Register List. These situations shall be subject to the following resolution for the purposes of this Trust Agreement.

1. The 2010 United States Census listed a total population of zero for 29 geographic census areas that align to 29 federally recognized Indian Tribes. The Alignment Table denotes these Indian Tribes as Exception Variant “A,” listing a population of zero for each Tribe. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 29 Indian Tribes that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement, because they are aligned with geographic census areas with a listed total population of zero in the 2010 United States Census, as denoted on the Alignment Table.

2. The Federal Register List denoted 12 Indian Tribes that align to more than one geographic census area in the 2010 United States Census. The Alignment Table lists these Indian Tribes as Exception Variant “B;” each of these Indian Tribes is represented on an individual row in the Alignment Table. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 12 Alignment Table rows shall represent and be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the respective total population listed in that Alignment Table row. Within each Indian Tribe denoted as Exception Variant B, more than one

entity may be designated as a Beneficiary pursuant to subparagraph 4.0.2. If this occurs in a funding cycle, the Trustee shall divide the total amount allocated to an Exception Variant B Indian Tribe (i.e., the sum of the per capita allocation and the pro rata population-based allocation) equally among the entities that were designated as participating Beneficiaries and comprise that Indian Tribe.

Example: According to the Federal Register List, the Minnesota Chippewa Tribe represents one Indian Tribe that consists of six component reservations. Assume that three of the six component reservations, the Fond du Lac Band, the Mille Lacs Band, and the White Earth Band, are designated as Beneficiaries pursuant to subparagraph 4.0.2 and each submits a timely Designated Beneficiary's Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count these three Bands as one Indian Tribe for the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 14,834 consistent with the corresponding geographic census area, as denoted on the Alignment Table. The Trustee shall then divide the total per capita and pro-rata population-based allocated amount into three equal shares, one share for each Band that is a participating Beneficiary. After the Trustee provides notice of the amount of funding available for each Beneficiary, the three participating Beneficiaries can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

3. In some cases, the 2010 United States Census reports the total population of a single geographic census area that aligns to more than one federally recognized Indian Tribe. The Alignment Table denotes these Indian Tribes as Exception Variant "C." For the per capita allocation in each funding cycle of the Trust Agreement, each of the Indian Tribes denoted with Exception Variant "C" shall be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the alignment of the Indian Tribes denoted with Exception Variant "C" to the corresponding specified geographic census area and respective total population consistent with the 2010 United States Census, as denoted on the Alignment Table. Once the pro-rata population-based allocation for the geographic census area has been calculated, the Trustee shall divide it equally among the Indian Tribes designated as participating Beneficiaries aligned to that geographic census area.

Example: The Cherokee Nation ("Cherokee") and the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") are aligned to a single geographic area, the Cherokee OTSA, Oklahoma. Assume that both the Cherokee and the UKB are designated as Beneficiaries and each submits a timely Designated Beneficiary's Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count the Cherokee and the UKB as two separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 125,440 attributable to the single geographic area of Cherokee OTSA, Oklahoma. Once the pro-rata population-based allocation for this geographic census area has been calculated, the Trustee shall then divide it into two equal shares, one for the Cherokee and one for the UKB. After the Trustee provides notice of the

amount of funding available for each Beneficiary, the two Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

4. The 2010 United States Census reports the total population of two geographic census areas that align to four Indian Tribes. The Alignment Table denotes these four Indian Tribes as Exception Variant “D.” For the per capita allocation in each funding cycle of the Trust Agreement, each of the Indian Tribes denoted with Exception Variant “D” shall be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the listed population of 21,692, as denoted in the Alignment Table. Once the pro-rata population-based allocation for the combined geographic census areas has been calculated, the Trustee shall divide it equally among the Indian Tribes designated as participating Beneficiaries within the geographic census areas.

Example 1: The Apache Tribe of Oklahoma (“Apache”), the Comanche Nation, the Fort Sill Apache Tribe, and the Kiowa Indian Tribe are aligned within two geographic areas in Oklahoma. Assume that all four Indian Tribes are designated as Beneficiaries and each submits a timely Designated Beneficiary’s Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count the Indian Tribes as four separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 21,692 for the combined geographic census areas, as denoted on the Alignment Table. Once the pro-rata population based allocation for the combined geographic census area has been calculated, the Trustee shall divide it into four equal shares, allocating one share to each of the four participating Beneficiaries within the combined geographic census areas. After the Trustee provides notice of the amount of funding available for each Beneficiary, the four Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

Example 2: Assume that only two of these four Tribes denoted with Exception Variant D on the Alignment Table, the Comanche and the Kiowa, are designated as Beneficiaries and timely submit a Designated Beneficiary’s Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. In that case, the Trustee shall count the Indian Tribes as two separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 21,692 for the combined geographic census areas, as denoted on the Alignment Table. Once the pro rata population-based allocation for the combined geographic census areas has been calculated, the Trustee shall divide it into two equal shares, allocating one share to each of the two participating Beneficiaries within the combined geographic census areas. After the Trustee provides notice of the amount of funding available for each Beneficiary, the two Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

5. There are 26 Indian Tribes included on the Federal Register List for which there is no evident alignment to a 2010 United States Census geographic census area name in Table PCT4.

The Alignment Table denotes these Indian Tribes as Exception Variant “E,” listing a population of zero for each Indian Tribe. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 26 Indian Tribes that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement.

6. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior publishes a current list of federally recognized Indian Tribes; this list may be updated from time to time. Following such updates, newly recognized Indian Tribes that do not appear on the Alignment Table may elect to become a Beneficiary hereunder by complying with Paragraph 4.0 and subparagraph 5.0.5.3.1 of the Trust Agreement. By the deadlines set out in Paragraph 4.0, the newly recognized Indian Tribe shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court, and concurrently submit to the Trustee a copy of the Beneficiary Status Certification Form (Appendix D-3) together with official documentation of federal recognition as an Indian Tribe. These newly recognized Indian Tribes shall be deemed to have a population of zero. For the per capita allocation in each funding cycle of the Trust Agreement, each newly recognized Indian Tribe that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These newly recognized Indian Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement.

The Alignment Table is attached hereto.

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|--|--|--|-----------------|
| 1 | 1,2,3 | C | Absentee-Shawnee Tribe of Indians of Oklahoma Citizen Potawatomi Nation, Oklahoma Shawnee Tribe | Citizen Potawatomi Nation-Absentee Shawnee OTSA, OK | 13,463 | 1 |
| 2 | 4 | | Agdaagux Tribe of King Cove | King Cove ANVSA, AK | 384 | 1 |
| 3 | 5 | | Agua Caliente Band of Cahulla Indians of the Agua Caliente Indian Reservation, California | Agua Caliente Indian Reservation and Off-Reservation Trust Land, CA | 435 | 1 |
| 4 | 6 | | Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona) | Maricopa (Ak Chin) Indian Reservation, AZ | 903 | 1 |
| 5 | 7 | | Akiachak Native Community | Akiachak ANVSA, AK | 603 | 1 |
| 6 | 8 | | Aktak Native Community | Aktak ANVSA, AK | 328 | 1 |
| 7 | 9 | | Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas) | Alabama-Coushatta Reservation and Off-Reservation Trust Land, TX | 567 | 1 |
| 8 | 10 | E | Alabama-Quassarte Tribal Town | No Census Area Mapped | None | 1 |
| 9 | 11 | | Alatna Village | Alatna ANVSA, AK | 31 | 1 |
| 10 | 12 | | Algaaciq Native Village (St. Mary's) | Algaaciq ANVSA, AK | 408 | 1 |
| 11 | 13 | | Allakaket Village | Allakaket ANVSA, AK | 170 | 1 |
| 12 | 14 | A | Alturas Indian Rancheria, California | Alturas Indian Rancheria, CA | 0 | 1 |
| 13 | 15 | | Alutiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor) | Old Harbor ANVSA, AK | 194 | 1 |
| 14 | 16 | | Angoon Community Association | Angoon ANVSA, AK | 405 | 1 |
| 15 | 17 | | Anvik Village | Anvik ANVSA, AK | 82 | 1 |
| 16 | 18, 19, 20, 21 | D | Apache Tribe of Oklahoma Comanche Nation, Oklahoma Fort Sill Apache Tribe of Oklahoma Kiowa Indian Tribe of Oklahoma | Kiowa-Comanche-Apache-Fort Sill Apache OTSA, OK, Kiowa-Comanche-Apache-Ft. Sill Apache/Caddo-Wichita-Delaware joint-use OTSA, OK | 21,692 | 2 |
| 17 | 22, 23 | C | Arapaho Tribe of the Wind River Reservation, Wyoming Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming) | Wind River Reservation and Off-Reservation Trust Land, WY | 8,445 | 1 |
| 18 | 24 | | Arctic Village (See Native Village of Venetie Tribal Government) | Arctic Village ANVSA, AK | 145 | 1 |
| 19 | 25 | | Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians) | Aroostook Band of Micmac Trust Land, ME | 150 | 1 |
| 20 | 26 | | Assi'caarsmiut Tribe | Mountain Village ANVSA, AK | 773 | 1 |
| 21 | 27 | | Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana | Fort Peck Indian Reservation and Off-Reservation Trust Land, MT | 6,973 | 1 |
| 22 | 28 | | Atkasuk Village (Atkasok) | Atkasuk ANVSA, AK | 217 | 1 |
| 23 | 29 | A | Augustine Band of Cahulla Indians, California (previously listed as the Augustine Band of Cahulla Mission Indians of the Augustine Reservation) | Augustine Reservation, CA | 0 | 1 |
| 24 | 30 | | Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin | Bad River Reservation, WI | 1,159 | 1 |
| 25 | 31 | | Bay Mills Indian Community, Michigan | Bay Mills Reservation and Off-Reservation Trust Land, MI | 849 | 1 |
| 26 | 32 | | Bear River Band of the Rohnerville Rancheria, California | Rohnerville Rancheria, CA | 16 | 1 |
| 27 | 33 | | Beaver Village | Beaver ANVSA, AK | 83 | 1 |
| 28 | 34 | | Berry Creek Rancheria of Maidu Indians of California | Berry Creek Rancheria and Off-Reservation Trust Land, CA | 119 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT4 ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|---|---|---|-----------------|
| 29 | 35 | | Big Lagoon Rancheria, California | Big Lagoon Rancheria, CA | 17 | 1 |
| 30 | 36 | | Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California) | Big Pine Reservation, CA | 418 | 1 |
| 31 | 37 | | Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California) | Big Sandy Rancheria, CA | 113 | 1 |
| 32 | 38 | | Big Valley Band of Pomo Indians of the Big Valley Rancheria, California | Big Valley Rancheria, CA | 115 | 1 |
| 33 | 39 | | Birch Creek Tribe | Birch Creek ANVSA, AK | 33 | 1 |
| 34 | 40 | | Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California) | Bishop Reservation, CA | 1,180 | 1 |
| 35 | 41 | | Blackfeet Tribe of the Blackfeet Indian Reservation of Montana | Blackfeet Indian Reservation and Off-Reservation Trust Land, MT | 9,149 | 1 |
| 36 | 42 | | Blue Lake Rancheria, California | Blue Lake Rancheria and Off-Reservation Trust Land, CA | 39 | 1 |
| 37 | 43 | | Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California) | Bridgeport Reservation, CA | 32 | 1 |
| 38 | 44 | E | Buena Vista Rancheria of Me-Wuk Indians of California | No Census Area Mapped | None | 1 |
| 39 | 45 | | Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon) | Burns Paiute Indian Colony and Off-Reservation Trust Land, OR | 124 | 1 |
| 40 | 46 | | Cabazon Band of Mission Indians, California | Cabazon Reservation, CA | 30 | 1 |
| 41 | 47 | | Cachil Dethle Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California | Colusa Rancheria, CA | 65 | 1 |
| 42 | 48, 49, 50, 51 | C | Caddo Nation of Oklahoma Delaware Nation, Oklahoma Delaware Tribe of Indians Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma | Caddo-Wichita-Delaware OTSA, OK | 1,961 | 1 |
| 43 | 52 | | Canto Tribe of the Laytonville Rancheria | Laytonville Rancheria, CA | 194 | 1 |
| 44 | 53 | | Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California) | Cahuilla Reservation, CA | 152 | 1 |
| 45 | 54 | E | California Valley Miwok Tribe, California | No Census Area Mapped | None | 1 |
| 46 | 55 | | Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California | Campo Indian Reservation, CA | 276 | 1 |
| 47 | 56 | B | Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California) | Barona Reservation, CA, Viejas Reservation, CA | 881 | 1 |
| 48 | 57 | | Catawba Indian Nation (aka Catawba Tribe of South Carolina) | Catawba Reservation, SC | 644 | 1 |
| 49 | 58 | | Cayuga Nation | Cayuga Nation TDSA, NV | 38 | 1 |
| 50 | 59 | | Cedarville Rancheria, California | Cedarville Rancheria and Off-Reservation Trust Land, CA | 8 | 1 |
| 51 | 60 | E | Central Council of the Tlingit & Haida Indian Tribes | No Census Area Mapped | None | 1 |
| 52 | 61 | | Chalkyitsik Village | Chalkyitsik ANVSA, AK | 59 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|--|--|--|-----------------|
| 53 | 62 | | Cheesh-Na Tribe (previously listed as the Native Village of Chistochina) | Chistochina ANVSA, AK | 50 | 1 |
| 54 | 63 | | Chemehuevi Indian Tribe of the Chemehuevi Reservation, California | Chemehuevi Reservation, CA | 202 | 1 |
| 55 | 64 | | Cher-Ae Heights Indian Community of the Trinidad Rancheria, California | Trinidad Rancheria and Off-Reservation Trust Land, CA | 103 | 1 |
| 56 | 65, 66 | C | Cherokee Nation United Keetoowah Band of Cherokee Indians in Oklahoma | Cherokee OTSA, OK | 125,440 | 3 |
| 57 | 67 | | Chevak Native Village | Chevak ANVSA, AK | 912 | 1 |
| 58 | 68 | | Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma) | Cheyenne-Arapaho OTSA, OK | 13,145 | 1 |
| 59 | 69 | | Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota | Cheyenne River Reservation and Off-Reservation Trust Land, SD | 6,331 | 1 |
| 60 | 70 | | Chickaloon Native Village | Chickaloon ANVSA, AK | 2,373 | 1 |
| 61 | 71 | | Chicken Ranch Rancheria of Me-Wuk Indians of California | Chicken Ranch Rancheria and Off-Reservation Trust Land, CA | 1 | 1 |
| 62 | 72 | | Chignik Bay Tribal Council (previously listed as the Native Village of Chignik) | Chignik ANVSA, AK | 56 | 1 |
| 63 | 73 | | Chignik Lake Village | Chignik Lake ANVSA, AK | 70 | 1 |
| 64 | 74 | | Chilkat Indian Village (Kukwan) | Chilkat ANVSA, AK | 88 | 1 |
| 65 | 75 | | Chilkoot Indian Association (Haines) | Chilkoot ANVSA, AK | 105 | 1 |
| 66 | 76 | | Chinik Eskimo Community (Golovin) | Golovin ANVSA, AK | 148 | 1 |
| 67 | 77 | | Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana) | Rocky Boy's Reservation and Off-Reservation Trust Land, MT | 3,256 | 1 |
| 68 | 78 | | Chitimacha Tribe of Louisiana | Chitimacha Reservation, LA | 396 | 1 |
| 69 | 79 | A | Chuloonawick Native Village | Chuloonawick ANVSA, AK | 0 | 1 |
| 70 | 80 | | Circle Native Community | Circle ANVSA, AK | 90 | 1 |
| 71 | 81 | E | Cloverdale Rancheria of Pomo Indians of California | No Census Area Mapped | None | 1 |
| 72 | 82 | | Cocopah Tribe of Arizona | Cocopah Reservation, AZ | 539 | 1 |
| 73 | 83 | | Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho) | Coeur d'Alene Reservation, ID | 1,551 | 1 |
| 74 | 84 | | Cold Springs Rancheria of Mono Indians of California | Cold Springs Rancheria, CA | 162 | 1 |
| 75 | 85 | | Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California | Colorado River Indian Reservation, AZ-CA | 2,830 | 1 |
| 76 | 86 | | Confederated Salish and Kootenai Tribes of the Flathead Reservation | Flathead Reservation, MT | 9,138 | 1 |
| 77 | 87 | | Confederated Tribes and Bands of the Yakama Nation | Yakama Nation Reservation and Off-Reservation Trust Land, WA | 8,022 | 1 |
| 78 | 88 | | Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) | Siletz Reservation and Off-Reservation Trust Land, OR | 427 | 1 |
| 79 | 89 | | Confederated Tribes of the Chehalis Reservation | Chehalis Reservation and Off-Reservation Trust Land, WA | 363 | 1 |
| 80 | 90 | | Confederated Tribes of the Colville Reservation | Colville Reservation and Off-Reservation Trust Land, WA | 4,994 | 1 |
| 81 | 91 | | Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians | Coos, Lower Umpqua, and Siuslaw Reservation and Off-Reservation Trust Land, OR | 31 | 1 |
| 82 | 92 | | Confederated Tribes of the Goshute Reservation, Nevada and Utah | Goshute Reservation, NV-UT | 127 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|---|---|--|-----------------|
| 83 | 93 | | Confederated Tribes of the Grand Ronde Community of Oregon | Grand Ronde Community and Off-Reservation Trust Land, OR | 353 | 1 |
| 84 | 94 | | Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon) | Umatilla Reservation, OR | 1,561 | 1 |
| 85 | 95 | | Confederated Tribes of the Warm Springs Reservation of Oregon | Warm Springs Reservation and Off-Reservation Trust Land, OR | 3,754 | 1 |
| 86 | 96 | | Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon) | Coquille Reservation, OR | 157 | 1 |
| 87 | 97 | | Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California) | Cortina Indian Rancheria, CA | 19 | 1 |
| 88 | 98 | | Coushatta Tribe of Louisiana | Coushatta Reservation and Off-Reservation Trust Land, LA | 74 | 1 |
| 89 | 99 | | Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon) | Cow Creek Reservation and Off-Reservation Trust Land, OR | 48 | 1 |
| 90 | 100 | E | Cowlitz Indian Tribe | No Census Area Mapped | None | 1 |
| 91 | 101 | | Coyote Valley Band of Pomo Indians of California | Coyote Valley Reservation, CA | 132 | 1 |
| 92 | 102 | | Craig Tribal Association (previously listed as the Craig Community Association) | Craig ANVSA, AK | 455 | 1 |
| 93 | 103 | | Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota | Crow Creek Reservation, SD | 1,821 | 1 |
| 94 | 104 | | Crow Tribe of Montana | Crow Reservation and Off-Reservation Trust Land, MT | 5,408 | 1 |
| 95 | 105 | E | Curyung Tribal Council | No Census Area Mapped | None | 1 |
| 96 | 106 | | Death Valley Timbi-Sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California) | Timbi-Sha Shoshone Reservation and Off-Reservation Trust Land, CA-NV | 18 | 1 |
| 97 | 107 | | Douglas Indian Association | Douglas ANVSA, AK | 972 | 1 |
| 98 | 108 | A | Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California) | Dry Creek Rancheria, CA | 0 | 1 |
| 99 | 109 | | Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada | Duckwater Reservation, NV | 122 | 1 |
| 100 | 110 | | Eastern Band of Cherokee Indians | Eastern Cherokee Reservation, NC | 7,351 | 1 |
| 101 | 111 | | Eastern Shawnee Tribe of Oklahoma | Eastern Shawnee OTSA, OK | 215 | 1 |
| 102 | 112 | | Egegik Village | Egegik ANVSA, AK | 51 | 1 |
| 103 | 113 | | Eklutna Native Village | Eklutna ANVSA, AK | 44 | 1 |
| 104 | 114 | | Elam Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California | Sulphur Bank Rancheria, CA | 47 | 1 |
| 105 | 115 | | Elk Valley Rancheria, California | Elk Valley Rancheria and Off-Reservation Trust Land, CA | 52 | 1 |
| 106 | 116 | | Ely Shoshone Tribe of Nevada | Ely Reservation, NV | 160 | 1 |
| 107 | 117 | | Emmonak Village | Emmonak ANVSA, AK | 737 | 1 |
| 108 | 118 | | Enterprise Rancheria of Maidu Indians of California | Enterprise Rancheria, CA | 1 | 1 |
| 109 | 119 | A | Evansville Village (aka Bettles Field) | Evansville ANVSA, AK | 9 | 1 |
| 110 | 120 | | Ewilaapaayp Band of Kumeyaay Indians, California | Ewilaapaayp Reservation, CA | 0 | 1 |
| 111 | 121 | E | Federated Indians of Graton Rancheria, California | No Census Area Mapped | None | 1 |
| 112 | 122 | | Flandreau Santee Sioux Tribe of South Dakota | Flandreau Reservation, SD | 371 | 1 |
| 113 | 123 | | Forest County Potawatomi Community, Wisconsin | Forest County Potawatomi Community and Off-Reservation Trust Land, WI | 514 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|---|--|--|-----------------|
| 114 | 124 | | Fort Belknap Indian Community of the Fort Belknap Reservation of Montana | Fort Belknap Reservation and Off-Reservation Trust Land, MT | 2,738 | 1 |
| 115 | 125 | | Fort Bidwell Indian Community of the Fort Bidwell Reservation of California | Fort Bidwell Reservation and Off-Reservation Trust Land, CA | 86 | 1 |
| 116 | 126 | | Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California | Fort Independence Reservation, CA | 62 | 1 |
| 117 | 127 | | Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon | Fort McDermitt Indian Reservation, NV--OR | 327 | 1 |
| 118 | 128 | | Fort McDowell Yavapai Nation, Arizona | Fort McDowell Yavapai Nation Reservation, AZ | 891 | 1 |
| 119 | 129 | | Fort Mojave Indian Tribe of Arizona, California & Nevada | Fort Mojave Reservation and Off-Reservation Trust Land, AZ--CA--NV | 683 | 1 |
| 120 | 130 | | Galena Village (aka Loudon Village) | Galena ANVSA, AK | 324 | 1 |
| 121 | 131 | | Gila River Indian Community of the Gila River Indian Reservation, Arizona | Gila River Indian Reservation, AZ | 11,251 | 1 |
| 122 | 132 | | Grand Traverse Band of Ottawa and Chippewa Indians, Michigan | Grand Traverse Reservation and Off-Reservation Trust Land, MI | 485 | 1 |
| 123 | 133 | | Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California) | Greenville Rancheria, CA | 19 | 1 |
| 124 | 134 | | Grindstone Indian Rancheria of Wintun-Waiiak Indians of California | Grindstone Indian Rancheria, CA | 153 | 1 |
| 125 | 135 | | Guidiville Rancheria of California | Guidiville Rancheria and Off-Reservation Trust Land, CA | 42 | 1 |
| 126 | 136 | | Gulkana Village | Gulkana ANVSA, AK | 97 | 1 |
| 127 | 137 | | Habemaiolei Pomo of Upper Lake, California | Upper Lake Rancheria, CA | 29 | 1 |
| 128 | 138 | | Hannahville Indian Community, Michigan | Hannahville Indian Community and Off-Reservation Trust Land, MI | 454 | 1 |
| 129 | 139 | | Havasupai Tribe of the Havasupai Reservation, Arizona | Havasupai Reservation, AZ | 455 | 1 |
| 130 | 140 | | Healy Lake Village | Healy Lake ANVSA, AK | 11 | 1 |
| 131 | 141 | | Ho-Chunk Nation of Wisconsin | Ho-Chunk Nation Reservation and Off-Reservation Trust Land, WI--MN | 1,215 | 1 |
| 132 | 142 | | Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington) | Hoh Indian Reservation, WA | 104 | 1 |
| 133 | 143 | | Holy Cross Village | Holy Cross ANVSA, AK | 170 | 1 |
| 134 | 144 | | Hoonah Indian Association | Hoonah ANVSA, AK | 502 | 1 |
| 135 | 145 | | Hoopa Valley Tribe, California | Hoopa Valley Reservation, CA | 2,667 | 1 |
| 136 | 146 | | Hopi Tribe of Arizona | Hopi Reservation and Off-Reservation Trust Land, AZ | 6,912 | 1 |
| 137 | 147 | | Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California) | Hopland Rancheria and Off-Reservation Trust Land, CA | 30 | 1 |
| 138 | 148 | | Houlton Band of Maliseet Indians | Houlton Maliseet Reservation and Off-Reservation Trust Land, ME | 169 | 1 |
| 139 | 149 | | Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona | Hualapai Indian Reservation and Off-Reservation Trust Land, AZ | 1,290 | 1 |
| 140 | 150 | | Hughes Village | Hughes ANVSA, AK | 75 | 1 |
| 141 | 151 | | Huslia Village | Huslia ANVSA, AK | 256 | 1 |
| 142 | 152 | | Hydaburg Cooperative Association | Hydaburg ANVSA, AK | 324 | 1 |
| 143 | 153 | | Igiugig Village | Igiugig ANVSA, AK | 35 | 1 |
| 144 | 154 | | Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation) | Santa Ysabel Reservation, CA | 289 | 1 |

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June 18, 2018

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|-----|--------------------------------|-------------------|--|---|---|-----------------|
| 145 | 155 | A | Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California | Inaja and Cosmit Reservation, CA | 0 | 1 |
| 146 | 156 | E | Inupiat Community of the Arctic Slope | No Census Area Mapped | None | 1 |
| 147 | 157 | A | Ione Band of Miwok Indians of California | Ione Band of Miwok TDSA, CA | 0 | 1 |
| 148 | 158 | | Iowa Tribe of Kansas and Nebraska | Iowa (KS-NE) Reservation and Off-Reservation Trust Land, KS-NE | 95 | 1 |
| 149 | 159 | | Iowa Tribe of Oklahoma | Iowa OTSA, OK | 625 | 1 |
| 150 | 160 | | Iqurmit Traditional Council | Russian Mission ANVSA, AK | 302 | 1 |
| 151 | 161 | | Ivanof Bay Tribe (previously listed as the Ivanof Bay Tribe and the Ivanof Bay Village) | Ivanof Bay ANVSA, AK | 7 | 1 |
| 152 | 162 | A | Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California) | Jackson Rancheria, CA | 0 | 1 |
| 153 | 163 | | Jameson S'Kiallam Tribe | Jameson S'Kiallam Reservation and Off-Reservation Trust Land, WA | 5 | 1 |
| 154 | 164 | A | Jamul Indian Village of California | Jamul Indian Village, CA | 0 | 1 |
| 155 | 165 | A | Jena Band of Choctaw Indians | Jena Band of Choctaw Reservation, LA | 0 | 1 |
| 156 | 166 | | Jicarilla Apache Nation, New Mexico | Jicarilla Apache Nation Reservation and Off-Reservation Trust Land, NM | 3,013 | 1 |
| 157 | 167 | E | Kaguyak Village | No Census Area Mapped | None | 1 |
| 158 | 168 | | Kaibab Band of Palute Indians of the Kaibab Indian Reservation, Arizona | Kaibab Indian Reservation, AZ | 211 | 1 |
| 159 | 169 | | Kaktovik Village (aka Barter Island) | Kaktovik ANVSA, AK | 215 | 1 |
| 160 | 170 | | Kalispel Indian Community of the Kalispel Reservation | Kalispel Reservation and Off-Reservation Trust Land, WA | 195 | 1 |
| 161 | 171 | | Karuk Tribe (previously listed as the Karuk Tribe of California) | Karuk Reservation and Off-Reservation Trust Land, CA | 387 | 1 |
| 162 | 172 | | Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California | Stewarts Point Rancheria, CA | 75 | 1 |
| 163 | 173 | | Kasigluk Traditional Elders Council | Kasigluk ANVSA, AK | 550 | 1 |
| 164 | 174 | | Kaw Nation, Oklahoma | Kaw OTSA, OK | 852 | 1 |
| 165 | 175 | | Kenaitze Indian Tribe | Kenaitze ANVSA, AK | 3,417 | 1 |
| 166 | 176 | | Keetchikan Indian Corporation | Keetchikan ANVSA, AK | 2,605 | 1 |
| 167 | 177 | | Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo) | Santo Domingo Pueblo, NM | 3,219 | 1 |
| 168 | 178 | | Keweenaw Bay Indian Community, Michigan | L'Anse Reservation and Off-Reservation Trust Land, MI | 1,286 | 1 |
| 169 | 179 | E | Kialagee Tribal Town | No Census Area Mapped | None | 1 |
| 170 | 180 | | Kickapoo Traditional Tribe of Texas | Kickapoo (TX) Reservation, TX | 351 | 1 |
| 171 | 181 | B | Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas | Kickapoo (KS) Reservation, KS, Kickapoo (KS) Reservation/Sac and Fox Nation Trust Land joint-use area, KS | 771 | 1 |
| 172 | 182 | | Kickapoo Tribe of Oklahoma | Kickapoo OTSA, OK | 2,968 | 1 |
| 173 | 183 | E | King Island Native Community | No Census Area Mapped | None | 1 |
| 174 | 184 | | King Salmon Tribe | King Salmon ANVSA, AK | 103 | 1 |
| 175 | 185 | | Klamath Tribes | Klamath Reservation, OR | 15 | 1 |
| 176 | 186 | | Klawock Cooperative Association | Klawock ANVSA, AK | 396 | 1 |
| 177 | 187 | | Krik Tribe | Krik ANVSA, AK | 6,582 | 1 |
| 178 | 188 | E | Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California) | No Census Area Mapped | None | 1 |
| 179 | 189 | | Kokhanok Village | Kokhanok ANVSA, AK | 153 | 1 |

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|-----|--------------------------------|-------------------|--|--|---|-----------------|
| 180 | 190 | | Kootenai Tribe of Idaho | Kootenai Reservation and Off-Reservation Trust Land, ID | 67 | 1 |
| 181 | 191 | | Koyukuk Native Village | Koyukuk ANVSA, AK | 95 | 1 |
| 182 | 192 | | La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation) | La Jolla Reservation, CA | 394 | 1 |
| 183 | 193 | | La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California | La Posta Indian Reservation, CA | 33 | 1 |
| 184 | 194 | | Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin | Lac Courte Oreilles Reservation and Off-Reservation Trust Land, WI | 2,221 | 1 |
| 185 | 195 | | Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin | Lac du Flambeau Reservation, WI | 2,244 | 1 |
| 186 | 196 | | Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan | Lac Vieux Desert Reservation, MI | 118 | 1 |
| 187 | 197 | | Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada | Las Vegas Indian Colony, NV | 86 | 1 |
| 188 | 198 | | Levelock Village | Levelock ANVSA, AK | 62 | 1 |
| 189 | 199 | | Lime Village | Lime Village ANVSA, AK | 28 | 1 |
| 190 | 200 | | Little River Band of Ottawa Indians, Michigan | Little River Reservation and Off-Reservation Trust Land, MI | 29 | 1 |
| 191 | 201 | | Little Traverse Bay Bands of Odawa Indians, Michigan | Little Traverse Bay Reservation and Off-Reservation Trust Land, MI | 37 | 1 |
| 192 | 202 | | Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California) | Lone Pine Reservation, CA | 162 | 1 |
| 193 | 203 | | Los Coyotes Band of Cahulla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahulla & Cupeno Indians of the Los Coyotes Reservation) | Los Coyotes Reservation, CA | 72 | 1 |
| 194 | 204 | | Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada | Lovelock Indian Colony, NV | 82 | 1 |
| 195 | 205 | | Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota | Lower Brule Reservation and Off-Reservation Trust Land, SD | 1,396 | 1 |
| 196 | 206 | | Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington) | Lower Elwha Reservation and Off-Reservation Trust Land, WA | 517 | 1 |
| 197 | 207 | | Lower Sioux Indian Community in the State of Minnesota | Lower Sioux Indian Community, MN | 384 | 1 |
| 198 | 208 | | Lummi Tribe of the Lummi Reservation | Lummi Reservation, WA | 2,643 | 1 |
| 199 | 209 | ▲ | Lytton Rancheria of California | Lytton Rancheria, CA | 0 | 1 |
| 200 | 210 | | Makah Indian Tribe of the Makah Indian Reservation | Makah Indian Reservation, WA | 1,232 | 1 |
| 201 | 211 | | Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California) | Manchester-Point Arena Rancheria, CA | 177 | 1 |
| 202 | 212 | | Manley Hot Springs Village | Manley Hot Springs ANVSA, AK | 26 | 1 |
| 203 | 213 | | Manokotak Village | Manokotak ANVSA, AK | 425 | 1 |
| 204 | 214 | | Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California | Manzanita Reservation and Off-Reservation Trust Land, CA | 62 | 1 |
| 205 | 215 | | Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut) | Mashantucket Pequot Reservation and Off-Reservation Trust Land, CT | 223 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

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| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|--|---|--|-----------------|
| 206 | 216 | E | Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) | No Census Area Mapped | None | 1 |
| 207 | 217 | A | Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan | Match-e-be-nash-she-wish Band of Pottawatomí Reservation, MI | 0 | 1 |
| 208 | 218 | | McGrath Native Village | McGrath ANVSA, AK | 192 | 1 |
| 209 | 219 | | Mechoopda Indian Tribe of Chico Rancheria, California | Mechoopda TDSA, CA | 217 | 1 |
| 210 | 220 | | Menominee Indian Tribe of Wisconsin | Menominee Reservation and Off-Reservation Trust Land, WI | 3,000 | 1 |
| 211 | 221 | | Mentasta Traditional Council | Mentasta Lake ANVSA, AK | 86 | 1 |
| 212 | 222 | | Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California | Mesa Grande Reservation, CA | 91 | 1 |
| 213 | 223 | | Mescalero Apache Tribe of the Mescalero Reservation, New Mexico | Mescalero Reservation, NM | 3,394 | 1 |
| 214 | 224 | | Metakatta Indian Community, Annette Island Reserve | Annette Island Reserve, AK | 1,294 | 1 |
| 215 | 225 | | Miami Tribe of Oklahoma | Miami OTSA, OK | 94 | 1 |
| 216 | 226 | A | Micosaukee Tribe of Indians | Micosaukee Reservation and Off-Reservation Trust Land, FL | 0 | 1 |
| 217 | 227 | | Middletown Rancheria of Pomo Indians of California | Middletown Rancheria, CA | 43 | 1 |
| 218 | 228 | B | Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Millie Lacs Band; White Earth Band) | Bois Forte Reservation, MN, Fond du Lac Reservation and Off-Reservation Trust Land, MN-WI, Grand Portage Reservation and Off-Reservation Trust Land, MN, Leech Lake Reservation and Off-Reservation Trust Land, MN, Millie Lacs Reservation and Off-Reservation Trust Land, MN, White Earth Reservation and Off-Reservation Trust Land, MN, Minnesota Chippewa Trust Land Reservation | 14,834 | 1 |
| 219 | 229 | | Mississippi Band of Choctaw Indians | Mississippi Choctaw Reservation, MS | 7,028 | 1 |
| 220 | 230 | | Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada | Moapa River Indian Reservation, NV | 234 | 1 |
| 221 | 231 | | Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut) | Mohegan Reservation and Off-Reservation Trust Land, CT | 30 | 1 |
| 222 | 232 | | Mooretown Rancheria of Maidu Indians of California | Mooretown Rancheria and Off-Reservation Trust Land, CA | 140 | 1 |
| 223 | 233 | | Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahulla Mission Indians of the Morongo Reservation) | Morongo Reservation and Off-Reservation Trust Land, CA | 632 | 1 |
| 224 | 234 | | Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) | Muckleshoot Reservation and Off-Reservation Trust Land, WA | 1,374 | 1 |
| 225 | 235 | | Naknek Native Village | Naknek ANVSA, AK | 283 | 1 |
| 226 | 236 | A | Narragansett Indian Tribe | Narragansett Reservation, RI | 0 | 1 |
| 227 | 237 | E | Native Village of Atoagnak | No Census Area Mapped | None | 1 |
| 228 | 238 | | Native Village of Akhlok | Akhlok ANVSA, AK | 62 | 1 |
| 229 | 239 | | Native Village of Akutan | Akutan ANVSA, AK | 76 | 1 |
| 230 | 240 | | Native Village of Aleknagik | Aleknagik ANVSA, AK | 185 | 1 |
| 231 | 241 | | Native Village of Ambler | Ambler ANVSA, AK | 228 | 1 |
| 232 | 242 | | Native Village of Atka | Atka ANVSA, AK | 58 | 1 |
| 233 | 243 | | Native Village of Barrow Inupiat Traditional Government | Barrow ANVSA, AK | 2,889 | 1 |
| 234 | 244 | A | Native Village of Belkofski | Belkofski ANVSA, AK | 0 | 1 |
| 235 | 245 | | Native Village of Brevig Mission | Brevig Mission ANVSA, AK | 366 | 1 |
| 236 | 246 | | Native Village of Buckland | Buckland ANVSA, AK | 405 | 1 |

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June 18, 2018

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|-----|--------------------------------|-------------------|--|--|--|-----------------|
| 237 | 247 | | Native Village of Cantwell | Cantwell ANVSA, AK | 45 | 1 |
| 238 | 248 | | Native Village of Chenega (aka Chanega) | Chenega ANVSA, AK | 46 | 1 |
| 239 | 249 | | Native Village of Chignik Lagoon | Chignik Lagoon ANVSA, AK | 58 | 1 |
| 240 | 250 | | Native Village of Chitina | Chitina ANVSA, AK | 42 | 1 |
| 241 | 251 | | Native Village of Chuathbaluk (Russian Mission, Kuskokwim) | Chuathbaluk ANVSA, AK | 112 | 1 |
| 242 | 252 | A | Native Village of Council | Council ANVSA, AK | 0 | 1 |
| 243 | 253 | | Native Village of Deering | Deering ANVSA, AK | 111 | 1 |
| 244 | 254 | | Native Village of Diomedea (aka Inalik) | Inalik ANVSA, AK | 110 | 1 |
| 245 | 255 | | Native Village of Eagle | Eagle ANVSA, AK | 28 | 1 |
| 246 | 256 | | Native Village of Eek | Eek ANVSA, AK | 289 | 1 |
| 247 | 257 | | Native Village of Ekwok | Ekwok ANVSA, AK | 2 | 1 |
| 248 | 258 | | Native Village of Ekwok (previously listed as Ekwok Village) | Ekwok ANVSA, AK | 109 | 1 |
| 249 | 259 | | Native Village of Elim | Elim ANVSA, AK | 305 | 1 |
| 250 | 260 | | Native Village of Eyak (Cordova) | Eyak ANVSA, AK | 9 | 1 |
| 251 | 261 | | Native Village of False Pass | False Pass ANVSA, AK | 27 | 1 |
| 252 | 262 | | Native Village of Fort Yukon | Fort Yukon ANVSA, AK | 530 | 1 |
| 253 | 263 | | Native Village of Gakona | Gakona ANVSA, AK | 34 | 1 |
| 254 | 264 | | Native Village of Gambell | Gambell ANVSA, AK | 654 | 1 |
| 255 | 265 | | Native Village of Georgetown | Georgetown ANVSA, AK | 2 | 1 |
| 256 | 266 | | Native Village of Goodnews Bay | Goodnews Bay ANVSA, AK | 232 | 1 |
| 257 | 267 | A | Native Village of Hamilton | Hamilton ANVSA, AK | 0 | 1 |
| 258 | 268 | | Native Village of Hooper Bay | Hooper Bay ANVSA, AK | 1,070 | 1 |
| 259 | 269 | E | Native Village of Kanatak | No Census Area Mapped | None | 1 |
| 260 | 270 | | Native Village of Karluk | Karluk ANVSA, AK | 35 | 1 |
| 261 | 271 | | Native Village of Kiana | Kiana ANVSA, AK | 338 | 1 |
| 262 | 272 | | Native Village of Kipnuk | Kipnuk ANVSA, AK | 626 | 1 |
| 263 | 273 | | Native Village of Kivalina | Kivalina ANVSA, AK | 366 | 1 |
| 264 | 274 | | Native Village of Kluti Kaah (aka Copper Center) | Copper Center ANVSA, AK | 184 | 1 |
| 265 | 275 | | Native Village of Kobuk | Kobuk ANVSA, AK | 136 | 1 |
| 266 | 276 | | Native Village of Kongiganak | Kongiganak ANVSA, AK | 430 | 1 |
| 267 | 277 | | Native Village of Kotzebue | Kotzebue ANVSA, AK | 2,585 | 1 |
| 268 | 278 | | Native Village of Koyuk | Koyuk ANVSA, AK | 319 | 1 |
| 269 | 279 | | Native Village of Kwigillingok | Kwigillingok ANVSA, AK | 310 | 1 |
| 270 | 280 | | Native Village of Kwiniagak (aka Quinagak) | Kwiniagak ANVSA, AK | 650 | 1 |
| 271 | 281 | | Native Village of Larsen Bay | Larsen Bay ANVSA, AK | 66 | 1 |
| 272 | 282 | | Native Village of Marshall (aka Fortuna Ledge) | Marshall ANVSA, AK | 402 | 1 |
| 273 | 283 | A | Native Village of Mary's Igloo | Mary's Igloo ANVSA, AK | 0 | 1 |
| 274 | 284 | | Native Village of Mekoryuk | Mekoryuk ANVSA, AK | 185 | 1 |
| 275 | 285 | | Native Village of Minto | Minto ANVSA, AK | 200 | 1 |
| 276 | 286 | | Native Village of Nanwalek (aka English Bay) | Nanwalek ANVSA, AK | 227 | 1 |
| 277 | 287 | | Native Village of Napaimute | Napaimute ANVSA, AK | 1 | 1 |
| 278 | 288 | | Native Village of Napakiak | Napakiak ANVSA, AK | 344 | 1 |
| 279 | 289 | | Native Village of Napakiak | Napakiak ANVSA, AK | 393 | 1 |
| 280 | 290 | | Native Village of Nelson Lagoon | Nelson Lagoon ANVSA, AK | 40 | 1 |
| 281 | 291 | | Native Village of Nightmute | Nightmute ANVSA, AK | 257 | 1 |
| 282 | 292 | | Native Village of Nikolski | Nikolski ANVSA, AK | 17 | 1 |

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|-----|--------------------------------|-------------------|---|--|--|-----------------|
| 283 | 293 | | Native Village of Noatak | Noatak ANVSA, AK | 499 | 1 |
| 284 | 294 | | Native Village of Nulqsut (aka Nookisut) | Nulqsut ANVSA, AK | 360 | 1 |
| 285 | 295 | | Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point) | Nunam Iqua ANVSA, AK | 174 | 1 |
| 286 | 296 | | Native Village of Nunapitchuk | Nunapitchuk ANVSA, AK | 484 | 1 |
| 287 | 297 | | Native Village of Uuzinkie | Uuzinkie ANVSA, AK | 146 | 1 |
| 288 | 298 | A | Native Village of Palmiut | Palmiut ANVSA, AK | 0 | 1 |
| 289 | 299 | | Native Village of Perryville | Perryville ANVSA, AK | 110 | 1 |
| 290 | 300 | | Native Village of Pilot Point | Pilot Point ANVSA, AK | 57 | 1 |
| 291 | 301 | | Native Village of Pitka's Point | Pitka's Point ANVSA, AK | 107 | 1 |
| 292 | 302 | | Native Village of Point Hope | Point Hope ANVSA, AK | 629 | 1 |
| 293 | 303 | | Native Village of Point Lay | Point Lay ANVSA, AK | 168 | 1 |
| 294 | 304 | | Native Village of Port Graham | Port Graham ANVSA, AK | 160 | 1 |
| 295 | 305 | | Native Village of Port Heiden | Port Heiden ANVSA, AK | 87 | 1 |
| 296 | 306 | | Native Village of Port Lions | Port Lions ANVSA, AK | 119 | 1 |
| 297 | 307 | | Native Village of Ruby | Ruby ANVSA, AK | 157 | 1 |
| 298 | 308 | | Native Village of Saint Michael | St. Michael ANVSA, AK | 379 | 1 |
| 299 | 309 | | Native Village of Savoonga | Savoonga ANVSA, AK | 637 | 1 |
| 300 | 310 | | Native Village of Scammon Bay | Scammon Bay ANVSA, AK | 472 | 1 |
| 301 | 311 | | Native Village of Selawik | Selawik ANVSA, AK | 792 | 1 |
| 302 | 312 | | Native Village of Shaktolik | Shaktolik ANVSA, AK | 242 | 1 |
| 303 | 313 | | Native Village of Shishmaref | Shishmaref ANVSA, AK | 540 | 1 |
| 304 | 314 | | Native Village of Shungnak | Shungnak ANVSA, AK | 247 | 1 |
| 305 | 315 | | Native Village of Stevens | Stevens Village ANVSA, AK | 71 | 1 |
| 306 | 316 | | Native Village of Tanacross | Tanacross ANVSA, AK | 122 | 1 |
| 307 | 317 | | Native Village of Tanana | Tanana ANVSA, AK | 220 | 1 |
| 308 | 318 | | Native Village of Tatitlek | Tatitlek ANVSA, AK | 58 | 1 |
| 309 | 319 | | Native Village of Tazlina | Tazlina ANVSA, AK | 134 | 1 |
| 310 | 320 | | Native Village of Teller | Teller ANVSA, AK | 220 | 1 |
| 311 | 321 | | Native Village of Tetlin | Tetlin ANVSA, AK | 122 | 1 |
| 312 | 322 | | Native Village of Tunuruklak | Tunuruklak ANVSA, AK | 370 | 1 |
| 313 | 323 | | Native Village of Tununak | Tununak ANVSA, AK | 314 | 1 |
| 314 | 324 | | Native Village of Tyonek | Tyonek ANVSA, AK | 162 | 1 |
| 315 | 325 | | Native Village of Unalakleet | Unalakleet ANVSA, AK | 574 | 1 |
| 316 | 326 | E | Native Village of Unga | No Census Area Mapped | None | 1 |
| 317 | 327, 328 | C | Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie) Village of Venetie (See Native Village of Venetie Tribal Government) | Venetie ANVSA, AK | 142 | 1 |
| 318 | 329 | | Native Village of Wales | Wales ANVSA, AK | 136 | 1 |
| 319 | 330 | | Native Village of White Mountain | White Mountain ANVSA, AK | 167 | 1 |
| 320 | 331 | | Navajo Nation, Arizona, New Mexico & Utah | Navajo Nation Reservation and Off-Reservation Trust Land, AZ--NM--UT | 169,321 | 3 |
| 321 | 332 | | Nenana Native Association | Nenana ANVSA, AK | 161 | 1 |
| 322 | 333 | | New Koliganek Village Council | New Koliganek ANVSA, AK | 202 | 1 |
| 323 | 334 | | New Stuyahok Village | New Stuyahok ANVSA, AK | 491 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

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|-----|--------------------------------|-------------------|--|---|---|-----------------|
| 324 | 335 | | Newhalen Village | Newhalen ANVSA, AK | 175 | 1 |
| 325 | 336 | | Newtok Village | Newtok ANVSA, AK | 343 | 1 |
| 326 | 337 | | Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho) | Nez Perce Reservation, ID | 2,692 | 1 |
| 327 | 338 | | Nikolai Village | Nikolai ANVSA, AK | 87 | 1 |
| 328 | 339 | | Ninilchik Village | Ninilchik ANVSA, AK | 1,112 | 1 |
| 329 | 340 | | Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington) | Nisqually Reservation, WA | 394 | 1 |
| 330 | 341 | | Nome Eskimo Community | Nome ANVSA, AK | 2,396 | 1 |
| 331 | 342 | | Nondalton Village | Nondalton ANVSA, AK | 137 | 1 |
| 332 | 343 | | Nooksack Indian Tribe | Nooksack Reservation and Off-Reservation Trust Land, WA | 695 | 1 |
| 333 | 344 | | Noorvik Native Community | Noorvik ANVSA, AK | 638 | 1 |
| 334 | 345 | | Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana | Northern Cheyenne Indian Reservation and Off-Reservation Trust Land, MT--SD | 4,478 | 1 |
| 335 | 346 | | Northfork Rancheria of Mono Indians of California | North Fork Rancheria and Off-Reservation Trust Land, CA | 48 | 1 |
| 336 | 347 | | Northway Village | Northway ANVSA, AK | 213 | 1 |
| 337 | 348 | A | Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie)) | Northwestern Shoshone Reservation, UT | 0 | 1 |
| 338 | 349 | | Notlawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.) | Huron Potawatomi Reservation and Off-Reservation Trust Land, MI | 34 | 1 |
| 339 | 350 | | Nulato Village | Nulato ANVSA, AK | 250 | 1 |
| 340 | 351 | E | Nunakayarmiut Tribe | No Census Area Mapped | None | 1 |
| 341 | 352 | | Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota) | Pine Ridge Reservation, SD--NE | 16,906 | 1 |
| 342 | 353 | | Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan) | Ohkay Owingeh, NM | 1,513 | 1 |
| 343 | 354 | | Omaha Tribe of Nebraska | Omaha Reservation, NE--IA | 2,353 | 1 |
| 344 | 355 | | Oneida Nation of New York | Oneida Nation Reservation, NY | 18 | 1 |
| 345 | 356 | | Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin) | Oneida (MI) Reservation and Off-Reservation Trust Land, WI | 4,654 | 1 |
| 346 | 357 | | Onondaga Nation | Onondaga Nation Reservation, NY | 457 | 1 |
| 347 | 358 | | Organized Village of Grayling (aka Hoikachuk) | Grayling ANVSA, AK | 181 | 1 |
| 348 | 359 | | Organized Village of Kake | Kake ANVSA, AK | 449 | 1 |
| 349 | 360 | | Organized Village of Kasaaan | Kasaan ANVSA, AK | 22 | 1 |
| 350 | 361 | | Organized Village of Kwehluuk | Kwehluuk ANVSA, AK | 703 | 1 |
| 351 | 362 | | Organized Village of Saxman | Saxman ANVSA, AK | 276 | 1 |
| 352 | 363 | | Orutsararmiut Traditional Native Council (previously listed as Orutsararmiut Native Village (aka Bethel)) | Bethel ANVSA, AK | 4,334 | 1 |
| 353 | 364 | | Oscarville Traditional Village | Oscarville ANVSA, AK | 67 | 1 |
| 354 | 365 | | Otoe-Missouria Tribe of Indians, Oklahoma | Otoe-Missouria OTSA, OK | 422 | 1 |
| 355 | 366 | | Ottawa Tribe of Oklahoma | Ottawa OTSA, OK | 1,359 | 1 |

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| 356 | 367 | | Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)) | Paiute (UT) Reservation, UT | 249 | 1 |
| 357 | 368 | B | Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada | Fallon Paiute-Shoshone Colony and Off-Reservation Trust Land, NV, Fallon Paiute-Shoshone Reservation and Off-Reservation Trust Land, NV | 614 | 1 |
| 358 | 369 | | Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California) | Pala Reservation, CA | 706 | 1 |
| 359 | 370 | | Pamunkey Indian Tribe | Pamunkey (state) Reservation, VA | 43 | 1 |
| 360 | 371 | | Pascua Yaqui Tribe of Arizona | Pascua Pueblo Yaqui Reservation, AZ | 3,219 | 1 |
| 361 | 372 | A | Paskenta Band of Nomlaki Indians of California | Paskenta Rancheria, CA | 0 | 1 |
| 362 | 373 | B | Passamaquoddy Tribe | Passamaquoddy Trust Land, ME, Indian Township Reservation, ME, Pleasant Point Reservation, ME | 1,263 | 1 |
| 363 | 374 | E | Pauloff Harbor Village | No Census Area Mapped | None | 1 |
| 364 | 375 | | Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California | Pauma and Yuima Reservation, CA | 156 | 1 |
| 365 | 376 | | Pawnee Nation of Oklahoma | Pawnee OTSA, OK | 2,786 | 1 |
| 366 | 377 | | Pecharanga Band of Luiseno Mission Indians of the Pecharanga Reservation, California | Pecharanga Reservation, CA | 250 | 1 |
| 367 | 378 | | Pedro Bay Village | Pedro Bay ANVSA, AK | 30 | 1 |
| 368 | 379 | | Penobscot Nation (previously listed as the Penobscot Tribe of Maine) | Penobscot Reservation and Off-Reservation Trust Land, ME | 512 | 1 |
| 369 | 380 | | Peoria Tribe of Indians of Oklahoma | Peoria OTSA, OK | 1,202 | 1 |
| 370 | 381 | | Petersburg Indian Association | Petersburg ANVSA, AK | 327 | 1 |
| 371 | 382 | | Picayune Rancheria of Chukchansi Indians of California | Picayune Rancheria and Off-Reservation Trust Land, CA | 58 | 1 |
| 372 | 383 | | Pilot Station Traditional Village | Pilot Station ANVSA, AK | 558 | 1 |
| 373 | 384 | | Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California) | Pinoleville Rancheria, CA | 87 | 1 |
| 374 | 385 | B | Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) | Big Bend Rancheria, CA, Likely Rancheria, CA, Lookout Rancheria, CA, Montgomery Creek Rancheria, CA, Roaring Creek Rancheria, CA, XL Ranch Rancheria, CA, Pit River Trust Land | 97 | 1 |
| 375 | 386 | | Platinum Traditional Village | Platinum ANVSA, AK | 57 | 1 |
| 376 | 387 | | Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama) | Poarch Creek Reservation and Off-Reservation Trust Land, AL--FL | 216 | 1 |
| 377 | 388 | | Pokagon Band of Potawatomi Indians, Michigan and Indiana | Pokagon Reservation and Off-Reservation Trust Land, MI | 2 | 1 |
| 378 | 389 | | Ponca Tribe of Indians of Oklahoma | Ponca OTSA, OK | 824 | 1 |
| 379 | 390 | | Ponca Tribe of Nebraska | Ponca (NE) Trust Land, NE--IA | 9 | 1 |
| 380 | 391 | | Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians) | Port Gamble Reservation, WA | 592 | 1 |
| 381 | 392 | | Portage Creek Village (aka Ohgsenakale) | Portage Creek ANVSA, AK | 1 | 1 |
| 382 | 393 | E | Potter Valley Tribe, California | No Census Area Mapped | None | 1 |

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| 383 | 394 | | Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas) | Prairie Band of Potawatomi Nation Reservation, KS | 822 | 1 |
| 384 | 395 | | Prairie Island Indian Community in the State of Minnesota | Prairie Island Indian Community and Off-Reservation Trust Land, MN | 178 | 1 |
| 385 | 396 | | Pueblo of Acoma, New Mexico | Acoma Pueblo and Off-Reservation Trust Land, NM | 2,947 | 1 |
| 386 | 397 | | Pueblo of Cochiti, New Mexico | Pueblo de Cochiti, NM | 854 | 1 |
| 387 | 398 | | Pueblo of Isleta, New Mexico | Isleta Pueblo, NM | 3,170 | 1 |
| 388 | 399 | | Pueblo of Jemez, New Mexico | Jemez Pueblo, NM | 1,797 | 1 |
| 389 | 400 | | Pueblo of Laguna, New Mexico | Laguna Pueblo and Off-Reservation Trust Land, NM | 3,909 | 1 |
| 390 | 401 | | Pueblo of Nambé, New Mexico | Nambé Pueblo and Off-Reservation Trust Land, NM | 529 | 1 |
| 391 | 402 | | Pueblo of Picuris, New Mexico | Picuris Pueblo, NM | 221 | 1 |
| 392 | 403 | | Pueblo of Pojoaque, New Mexico | Pueblo of Pojoaque and Off-Reservation Trust Land, NM | 462 | 1 |
| 393 | 404 | | Pueblo of San Felipe, New Mexico | San Felipe Pueblo, NM | 2,836 | 1 |
| 394 | 405 | | Pueblo of San Ildefonso, New Mexico | San Ildefonso Pueblo and Off-Reservation Trust Land, NM | 498 | 1 |
| 395 | 406 | | Pueblo of Sandia, New Mexico | Sandia Pueblo, NM | 692 | 1 |
| 396 | 407 | | Pueblo of Santa Ana, New Mexico | Santa Ana Pueblo, NM | 597 | 1 |
| 397 | 408 | | Pueblo of Santa Clara, New Mexico | Santa Clara Pueblo, NM | 1,547 | 1 |
| 398 | 409 | | Pueblo of Taos, New Mexico | Taos Pueblo and Off-Reservation Trust Land, NM | 1,308 | 1 |
| 399 | 410 | | Pueblo of Tesuque, New Mexico | Tesuque Pueblo and Off-Reservation Trust Land, NM | 356 | 1 |
| 400 | 411 | | Pueblo of Zia, New Mexico | Zia Pueblo and Off-Reservation Trust Land, NM | 736 | 1 |
| 401 | 412 | | Puyallup Tribe of the Puyallup Reservation | Puyallup Reservation and Off-Reservation Trust Land, WA | 2,127 | 1 |
| 402 | 413 | | Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada | Pyramid Lake Paiute Reservation, NV | 1,265 | 1 |
| 403 | 414 | | Qagan Tayagungin Tribe of Sand Point Village | Sand Point ANVSA, AK | 417 | 1 |
| 404 | 415 | | Qawlangin Tribe of Unalaska | Unalaska ANVSA, AK | 355 | 1 |
| 405 | 416 | | Quartz Valley Indian Community of the Quartz Valley Reservation of California | Quartz Valley Reservation and Off-Reservation Trust Land, CA | 99 | 1 |
| 406 | 417 | | Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona | Fort Yuma Indian Reservation, CA--AZ | 1,461 | 1 |
| 407 | 418 | | Quileute Tribe of the Quileute Reservation | Quileute Reservation, WA | 394 | 1 |
| 408 | 419 | | Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington) | Quinault Reservation, WA | 1,098 | 1 |
| 409 | 420 | | Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California) | Ramona Village, CA | 12 | 1 |
| 410 | 421 | | Rampart Village | Rampart ANVSA, AK | 23 | 1 |
| 411 | 422 | | Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin | Red Cliff Reservation and Off-Reservation Trust Land, WI | 984 | 1 |
| 412 | 423 | | Red Lake Band of Chippewa Indians, Minnesota | Red Lake Reservation, MN | 5,805 | 1 |
| 413 | 424 | | Redding Rancheria, California | Redding Rancheria, CA | 22 | 1 |
| 414 | 425 | | Redwood Valley or Little River Band of Porno Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Porno Indians of California) | Redwood Valley Rancheria, CA | 101 | 1 |
| 415 | 426 | | Reno-Sparks Indian Colony, Nevada | Reno-Sparks Indian Colony, NV | 875 | 1 |
| 416 | 427 | | Resighini Rancheria, California | Resighini Rancheria, CA | 26 | 1 |
| 417 | 428 | | Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California | Rincon Reservation, CA | 511 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|--|---|--|-----------------|
| 418 | 429 | | Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California) | Robinson Rancheria and Off-Reservation Trust Land, CA | 199 | 1 |
| 419 | 430 | | Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota | Rosebud Indian Reservation and Off-Reservation Trust Land, SD | 9,809 | 1 |
| 420 | 431 | | Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California) | Round Valley Reservation and Off-Reservation Trust Land, CA | 292 | 1 |
| 421 | 432 | B | Sac & Fox Nation of Missouri in Kansas and Nebraska | Sac and Fox Nation Reservation and Off-Reservation Trust Land, NE--KS, Kickapoo (KS) Reservation/Sac and Fox Nation Trust Land joint-use area, KS | 71 | 1 |
| 422 | 433 | | Sac & Fox Nation, Oklahoma | Sac and Fox OTSA, OK | 8,347 | 1 |
| 423 | 434 | | Sac & Fox Tribe of the Mississippi in Iowa | Sac and Fox/Meskaki Settlement, IA | 1,004 | 1 |
| 424 | 435 | | Saginaw Chippewa Indian Tribe of Michigan | Isabella Reservation, MI | 2,409 | 1 |
| 425 | 436 | | Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands) | St. George ANVSA, AK | 92 | 1 |
| 426 | 437 | | Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands) | St. Paul ANVSA, AK | 417 | 1 |
| 427 | 438 | | Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York) | St. Regis Mohawk Reservation, NY | 3,131 | 1 |
| 428 | 439 | | Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona | Salt River Reservation, AZ | 4,692 | 1 |
| 429 | 440 | | Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington) | Samish TDSA, WA | 801 | 1 |
| 430 | 441 | | San Carlos Apache Tribe of the San Carlos Reservation, Arizona | San Carlos Reservation, AZ | 9,901 | 1 |
| 431 | 442 | E | San Juan Southern Paiute Tribe of Arizona | No Census Area Mapped | None | 1 |
| 432 | 443 | | San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation) | San Manuel Reservation, CA | 72 | 1 |
| 433 | 444 | | San Pasqual Band of Diegueno Mission Indians of California | San Pasqual Reservation, CA | 641 | 1 |
| 434 | 445 | | Santa Rosa Band of Cahulla Indians, California (previously listed as the Santa Rosa Band of Cahulla Mission Indians of the Santa Rosa Reservation) | Santa Rosa Reservation, CA | 61 | 1 |
| 435 | 446 | | Santa Rosa Indian Community of the Santa Rosa Rancheria, California | Santa Rosa Rancheria, CA | 575 | 1 |
| 436 | 447 | | Santa Ynez Band of Churnash Mission Indians of the Santa Ynez Reservation, California | Santa Ynez Reservation, CA | 214 | 1 |
| 437 | 448 | | Santee Sioux Nation, Nebraska | Santee Reservation, NE | 686 | 1 |
| 438 | 449 | | Sauk-Siattie Indian Tribe | Sauk-Siattie Reservation, WA | 57 | 1 |
| 439 | 450 | | Sault Ste. Marie Tribe of Chippewa Indians, Michigan | Sault Sainte Marie Reservation and Off-Reservation Trust Land, MI | 1,231 | 1 |
| 440 | 451 | E | Scotts Valley Band of Pomo Indians of California | No Census Area Mapped | None | 1 |
| 441 | 452 | | Seldovia Village Tribe | Seldovia ANVSA, AK | 118 | 1 |
| 442 | 453 | B | Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)) | Big Cypress Reservation, FL, Brighton Reservation, FL, Hollywood Reservation, FL, Seminole (FL) Trust Land, FL, Tampa Reservation, FL | 1,530 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT14 ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|---|---|--|-----------------|
| 443 | 454 | B | Seneca Nation of Indians (previously listed as the Seneca Nation of New York) | Allegheny Reservation, NY, Cattaraugus Reservation, NY, Oil Springs Reservation, NY | 3,783 | 1 |
| 444 | 455 | | Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma) | Seneca-Cayuga OTSA, OK | 802 | 1 |
| 445 | 456 | | Shageluk Native Village | Shageluk ANVSA, AK | 80 | 1 |
| 446 | 457 | | Shakopee Mdewakanton Sioux Community of Minnesota | Shakopee Mdewakanton Sioux Community and Off-Reservation Trust Land, MN | 406 | 1 |
| 447 | 458 | | Shenwood Valley Rancheria of Pomo Indians of California | Shenwood Valley Rancheria and Off-Reservation Trust Land, CA | 140 | 1 |
| 448 | 459 | | Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California | Shingle Springs Rancheria, CA | 77 | 1 |
| 449 | 460 | | Shinnecock Indian Nation | Shinnecock (state) Reservation, NY | 584 | 1 |
| 450 | 461 | | Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington) | Shoalwater Bay Indian Reservation and Off-Reservation Trust Land, WA | 53 | 1 |
| 451 | 462 | | Shoshone-Bannock Tribes of the Fort Hall Reservation | Fort Hall Reservation and Off-Reservation Trust Land, ID | 3,776 | 1 |
| 452 | 463 | | Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada | Duck Valley Reservation, NV--ID | 1,232 | 1 |
| 453 | 464 | | Sisseton-Wanpeton Oyate of the Lake Traverse Reservation, South Dakota | Lake Traverse Reservation and Off-Reservation Trust Land, SD--ND | 4,393 | 1 |
| 454 | 465 | | Sitka Tribe of Alaska | Sitka ANVSA, AK | 1,240 | 1 |
| 455 | 466 | | Skagway Village | Skagway ANVSA, AK | 52 | 1 |
| 456 | 467 | | Stokomish Indian Tribe (previously listed as the Stokomish Indian Tribe of the Stokomish Reservation, Washington) | Stokomish Reservation, WA | 528 | 1 |
| 457 | 468 | | Skull Valley Band of Goshute Indians of Utah | Skull Valley Reservation, UT | 22 | 1 |
| 458 | 469 | A | Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington) | Snoqualmie Reservation, WA | 0 | 1 |
| 459 | 470 | | Soboba Band of Luiseno Indians, California | Soboba Reservation and Off-Reservation Trust Land, CA | 413 | 1 |
| 460 | 471 | | Sokaogon Chippewa Community, Wisconsin | Sokaogon Chippewa Community and Off-Reservation Trust Land, WI | 363 | 1 |
| 461 | 472 | | South Naknek Village | South Naknek ANVSA, AK | 66 | 1 |
| 462 | 473 | | Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado | Southern Ute Reservation, CO | 1,743 | 1 |
| 463 | 474 | | Spirit Lake Tribe, North Dakota | Spirit Lake Reservation, ND | 3,642 | 1 |
| 464 | 475 | | Spokane Tribe of the Spokane Reservation | Spokane Reservation and Off-Reservation Trust Land, WA | 1,771 | 1 |
| 465 | 476 | | Squaxin Island Tribe of the Squaxin Island Reservation | Squaxin Island Reservation and Off-Reservation Trust Land, WA | 341 | 1 |
| 466 | 477 | | St. Croix Chippewa Indians of Wisconsin | St. Croix Reservation and Off-Reservation Trust Land, WI | 639 | 1 |
| 467 | 478 | | Standing Rock Sioux Tribe of North & South Dakota | Standing Rock Reservation, SD--ND | 6,414 | 1 |
| 468 | 479 | | Stebbins Community Association | Stebbins ANVSA, AK | 530 | 1 |
| 469 | 480 | A | Silliguanish Tribe of Indians of Washington (previously listed as the Silliguanish Tribe of Washington) | Silliguanish Reservation and Off-Reservation Trust Land, WA | 0 | 1 |
| 470 | 481 | | Stockbridge Murree Community, Wisconsin | Stockbridge Murree Community, WI | 534 | 1 |
| 471 | 482 | | Summit Lake Paiute Tribe of Nevada | Summit Lake Reservation and Off-Reservation Trust Land, NV | 1 | 1 |
| 472 | 483 | A | Sur'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) | Kodiak ANVSA, AK | 0 | 1 |
| 473 | 484 | | Suquamish Indian Tribe of the Port Madison Reservation | Port Madison Reservation, WA | 941 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT4 ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|---|---|---|-----------------|
| 474 | 485 | | Susanville Indian Rancheria, California | Susanville Indian Rancheria and Off-Reservation Trust Land, CA | 301 | 1 |
| 475 | 486 | | Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington) | Swinomish Reservation and Off-Reservation Trust Land, WA | 734 | 1 |
| 476 | 487 | | Sycuan Band of the Kumeyaay Nation | Sycuan Reservation, CA | 147 | 1 |
| 477 | 488 | | Table Mountain Rancheria of California | Table Mountain Rancheria, CA | 3 | 1 |
| 478 | 489 | | Takotna Village | Takotna ANVSA, AK | 25 | 1 |
| 479 | 490 | A | Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)) | Lesnoi ANVSA, AK | 0 | 1 |
| 480 | 491 | E | Tejon Indian Tribe | No Census Area Mapped | None | 1 |
| 481 | 492 | | Telida Village | Telida ANVSA, AK | 3 | 1 |
| 482 | 493 | B | Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band) | Battle Mountain Reservation, NV, Elko Colony, NV, South Fork Reservation and Off-Reservation Trust Land, NV, Wells Colony, NV | 961 | 1 |
| 483 | 494 | | The Chickasaw Nation | Chickasaw OTSA, OK | 41,048 | 2 |
| 484 | 495 | | The Choctaw Nation of Oklahoma | Choctaw OTSA, OK | 47,649 | 2 |
| 485 | 496 | | The Modoc Tribe of Oklahoma | Modoc OTSA, OK | 139 | 1 |
| 486 | 497 | | The Muscogee (Creek) Nation | Creek OTSA, OK | 99,451 | 3 |
| 487 | 498 | | The Osage Nation (previously listed as the Osage Tribe) | Osage Reservation, OK | 9,920 | 1 |
| 488 | 499 | | The Quapaw Tribe of Indians | Quapaw OTSA, OK | 1,314 | 1 |
| 489 | 500 | | The Seminole Nation of Oklahoma | Seminole OTSA, OK | 5,664 | 1 |
| 490 | 501 | E | Thlopthlocco Tribal Town | No Census Area Mapped | None | 1 |
| 491 | 502 | | Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota | Fort Berthold Reservation, ND | 4,763 | 1 |
| 492 | 503 | | Tohono O'odham Nation of Arizona | Tohono O'odham Nation Reservation and Off-Reservation Trust Land, AZ | 9,278 | 1 |
| 493 | 504 | | Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) | Smith River Rancheria and Off-Reservation Trust Land, CA | 86 | 1 |
| 494 | 505 | | Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York) | Tonawanda Reservation, NY | 497 | 1 |
| 495 | 506 | | Tonkawa Tribe of Indians of Oklahoma | Tonkawa OTSA, OK | 625 | 1 |
| 496 | 507 | | Tonto Apache Tribe of Arizona | Tonto Apache Reservation, AZ | 90 | 1 |
| 497 | 508 | | Torres Martinez Desert Cahulla Indians, California (previously listed as the Torres-Martinez Band of Cahulla Mission Indians of California) | Torres-Martinez Reservation, CA | 225 | 1 |
| 498 | 509 | | Traditional Village of Togiak | Togiak ANVSA, AK | 767 | 1 |
| 499 | 510 | | Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) | Tulalip Reservation and Off-Reservation Trust Land, WA | 2,882 | 1 |
| 500 | 511 | | Tule River Indian Tribe of the Tule River Reservation, California | Tule River Reservation and Off-Reservation Trust Land, CA | 947 | 1 |
| 501 | 512 | | Tululsak Native Community | Tululsak ANVSA, AK | 357 | 1 |
| 502 | 513 | | Tunica-Biloxi Indian Tribe | Tunica-Biloxi Reservation and Off-Reservation Trust Land, LA | 81 | 1 |
| 503 | 514 | | Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California | Tuolumne Rancheria, CA | 155 | 1 |
| 504 | 515 | | Turtle Mountain Band of Chippewa Indians of North Dakota | Turtle Mountain Reservation and Off-Reservation Trust Land, MT--ND--SD | 8,413 | 1 |

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|--|--|--|-----------------|
| 505 | 516 | | Tuscarora Nation | Tuscarora Nation Reservation, NY | 385 | 1 |
| 506 | 517 | | Twenty-Nine Palms Band of Mission Indians of California | Twenty-Nine Palms Reservation, CA | 5 | 1 |
| 507 | 518 | | Twin Hills Village | Twin Hills ANVSA, AK | 72 | 1 |
| 508 | 519 | | Ugashik Village | Ugashik ANVSA, AK | 9 | 1 |
| 509 | 520 | E | Umkumit Native Village (previously listed as Umkumite Native Village) | No Census Area Mapped | None | 1 |
| 510 | 521 | A | United Auburn Indian Community of the Auburn Rancheria of California | Auburn Rancheria and Off-Reservation Trust Land, CA | 0 | 1 |
| 511 | 522 | | Upper Sioux Community, Minnesota | Upper Sioux Community and Off-Reservation Trust Land, MN | 133 | 1 |
| 512 | 523 | | Upper Skagit Indian Tribe | Upper Skagit Reservation, WA | 190 | 1 |
| 513 | 524 | | The Indian Tribe of the Uintah & Ouray Reservation, Utah | Uintah and Ouray Reservation and Off-Reservation Trust Land, UT | 3,457 | 1 |
| 514 | 525 | | Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah) | Ute Mountain Reservation and Off-Reservation Trust Land, CO--NM--UT | 1,701 | 1 |
| 515 | 526 | | Utu Utu Gwaithu Paiute Tribe of the Benton Paiute Reservation, California | Benton Paiute Reservation and Off-Reservation Trust Land, CA | 58 | 1 |
| 516 | 527 | | Village of Alakanuk | Alakanuk ANVSA, AK | 660 | 1 |
| 517 | 528 | | Village of Anaktuvuk Pass | Anaktuvuk Pass ANVSA, AK | 298 | 1 |
| 518 | 529 | | Village of Aniak | Aniak ANVSA, AK | 397 | 1 |
| 519 | 530 | | Village of Atmautiuk | Atmautiuk ANVSA, AK | 271 | 1 |
| 520 | 531 | A | Village of Bill Moore's Slough | Bill Moore's ANVSA, AK | 0 | 1 |
| 521 | 532 | | Village of Chetornak | Chetornak ANVSA, AK | 403 | 1 |
| 522 | 533 | | Village of Clark's Point | Clark's Point ANVSA, AK | 55 | 1 |
| 523 | 534 | | Village of Crooked Creek | Crooked Creek ANVSA, AK | 97 | 1 |
| 524 | 535 | | Village of Dot Lake | Dot Lake ANVSA, AK | 57 | 1 |
| 525 | 536 | | Village of Iliamna | Iliamna ANVSA, AK | 71 | 1 |
| 526 | 537 | | Village of Kalskag | Kalskag ANVSA, AK | 193 | 1 |
| 527 | 538 | | Village of Kaltag | Kaltag ANVSA, AK | 179 | 1 |
| 528 | 539 | | Village of Kotlik | Kotlik ANVSA, AK | 563 | 1 |
| 529 | 540 | | Village of Lower Kalskag | Lower Kalskag ANVSA, AK | 274 | 1 |
| 530 | 541 | A | Village of Ohogarnit | Ohogarnit ANVSA, AK | 0 | 1 |
| 531 | 542 | | Village of Red Devil | Red Devil ANVSA, AK | 19 | 1 |
| 532 | 543 | | Village of Salamatoff | Salamatoff ANVSA, AK | 236 | 1 |
| 533 | 544 | | Village of Sleethnute | Sleethnute ANVSA, AK | 66 | 1 |
| 534 | 545 | A | Village of Solomon | Solomon ANVSA, AK | 0 | 1 |
| 535 | 546 | | Village of Stony River | Stony River ANVSA, AK | 50 | 1 |
| 536 | 547 | | Village of Wainwright | Wainwright ANVSA, AK | 510 | 1 |
| 537 | 548 | | Walker River Paiute Tribe of the Walker River Reservation, Nevada | Walker River Reservation, NV | 643 | 1 |
| 538 | 549 | | Wampanoag Tribe of Gay Head (Aquinnah) | Wampanoag-Aquinnah Trust Land, MA | 60 | 1 |
| 539 | 550 | B | Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches) | Carson Colony, NV, Dresslerville Colony, NV, Stewart Community, NV, Washoe Ranches Trust Land, NV--CA, Woodfords Community, CA | 984 | 1 |
| 540 | 551 | | White Mountain Apache Tribe of the Fort Apache Reservation, Arizona | Fort Apache Reservation, AZ | 13,014 | 1 |

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCT4 ⁴ | Group Alignment |
|---------------|--------------------------------|-------------------|---|---|---|-----------------|
| 541 | 552 | E | Wilton Rancheria, California | No Census Area Mapped | None | 1 |
| 542 | 553 | | Winnemucca Tribe of Nebraska | Winnemucca Reservation and Off-Reservation Trust Land, NE--IA | 1,749 | 1 |
| 543 | 554 | | Winnemucca Indian Colony of Nevada | Winnemucca Indian Colony, NV | 43 | 1 |
| 544 | 555 | | Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe) | Table Bluff Reservation, CA | 81 | 1 |
| 545 | 556 | | Wrangell Cooperative Association | Wrangell ANVSA, AK | 371 | 1 |
| 546 | 557 | | Wyandotte Nation | Wyandotte OTSA, OK | 454 | 1 |
| 547 | 558 | | Yakutat Tlingit Tribe | Yakutat ANVSA, AK | 330 | 1 |
| 548 | 559 | | Yankton Sioux Tribe of South Dakota | Yankton Reservation, SD | 3,074 | 1 |
| 549 | 560 | | Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona | Yavapai-Apache Nation Reservation, AZ | 634 | 1 |
| 550 | 561 | | Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) | Yavapai-Prescott Reservation, AZ | 143 | 1 |
| 551 | 562 | B | Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada | Yerington Colony, NV, Campbell Ranch, NV | 382 | 1 |
| 552 | 563 | | Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California) | Rumsey Indian Rancheria, CA | 42 | 1 |
| 553 | 564 | | Yomba Shoshone Tribe of the Yomba Reservation, Nevada | Yomba Reservation, NV | 81 | 1 |
| 554 | 565 | | Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas) | Ysleta del Sur Pueblo and Off-Reservation Trust Land, TX | 609 | 1 |
| 555 | 566 | | Yupiiit of Andreafski | Andreafsky ANVSA, AK | 80 | 1 |
| 556 | 567 | | Yurok Tribe of the Yurok Reservation, California | Yurok Reservation, CA | 712 | 1 |
| 557 | 568 | | Zuni Tribe of the Zuni Reservation, New Mexico | Zuni Reservation and Off-Reservation Trust Land, NM--AZ | 7,627 | 1 |
| Total: | | | | | 1,040,851 | -- |

Notes:

This Table reflects the mapping of federally recognized Indian Tribes per 83 Fed. Reg. 4,235 (Jan. 30, 2018) to Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American FactFinder, filtered according to geography (i.e., American Indian and Alaska Native areas) and race and ethnicity (i.e., American Indian and Alaska Native). In order to access Table PCT4, take the following steps: 1. Access the U.S. Census Bureau's American FactFinder, "Advanced Search" feature at factfinder.census.gov. 2. Click the "Geographies" label on the left sidebar. 3. Select "American Indian Area/Hawaiian Home Land - 250" from the dropdown menu. 4. Select "All American Indian Areas/Alaska Native Areas/Hawaiian Home Lands within the United States" from the resulting list. 5. Click "Add to your selection" with the item in step 4 selected. 6. Click the "Race and Ethnic Groups" label on the left sidebar. 7. Click the link "American Indian." 9. Use the dropdown menu that reads "All Available Programs" to select "Decennial Census." 10. From the resulting array of tables, select Table PCT4: "AMERICAN INDIAN AND ALASKA NATIVE ALONE OR IN COMBINATION WITH ONE OR MORE RACES."

¹ In some instances, the geographic census areas mapped to an Indian Tribe were also mapped to other Indian Tribes. To avoid double-counting, it was necessary to group Indian Tribes together. When this occurs, the column contains multiple numbers, reflecting the number of grouped Indian Tribes. See also Exception Variants below.

² Reflects Indian Tribe name per the list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018).

³ Reflects geographic census area(s) name(s) mapped to specific Indian Tribe(s), per Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American FactFinder, as explained above.

⁴ Reflects the value of "Total Population" for the census area(s) mapped to specific Indian Tribe(s), per Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American FactFinder, as explained above.

Exception Variant:

- A. The U.S. Census population data lists zero population for 29 Indian Tribes. These Indian Tribes are included in Group 1 of the Jenks Groupings.
- B. The Federal Register notice lists 12 Indian Tribes for which the U.S. Census aligns more than one geographic census area. For purposes of Jenks groupings, all 12 Indian Tribes are aligned to the Group 1 category.

Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups

June 18, 2018

| No. | Sequential Number ¹ | Exception Variant | Indian Tribe(s) ² | Geographic Census Area Name ³ | Total Population per 2010 U.S. Census Table PCTA ⁴ | Group Alignment |
|-----|--------------------------------|-------------------|------------------------------|--|---|-----------------|
|-----|--------------------------------|-------------------|------------------------------|--|---|-----------------|

- C. The U.S. Census population data aligns the population of more than one Indian Tribe to only one census area. For purposes of Jenks Groupings, each Indian Tribe is counted as a separate and distinct Indian Tribe, and is aligned to Jenks Groupings based on the population listed for the census area.
- D. The U.S. Census population data aligns the population of more than one Tribal Nation to more than one census area, with a combined population of 21,692. For purposes of Jenks Groupings, each Indian Tribe is counted as a separate and distinct Indian Tribe, and are aligned to Jenks Groupings based on the total population listed for the census areas.
- E. The Federal Register notice lists 26 Indian Tribes for which there is no evident alignment to U.S. Census geographic area names, and therefore no population estimate. These Indian Tribes are included in Group 1.

The Volkswagen Diesel Emissions Environmental Mitigation Trust

for Indian Tribe Beneficiaries

Notice of Proposed Material Modification of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries in accordance with Subparagraph 6.5 thereof

Dated: June 21, 2018

Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (“the Indian Tribe Trust”) hereby gives Notice of the Proposed Material Modification of the Indian Tribe Trust Agreement, which resulted from the process conducted by the U.S. Department of Justice, Office of Tribal Justice as required by the Order of the U.S. District Court for the Northern District of California dated March 2, 2018 (the “Order”). A copy of which is attached hereto.

Pursuant to Paragraph 6.5 of the Indian Tribe Trust Agreement, the Trustee is required to provide to the Beneficiaries not less than 30 Days’ notice of any proposed modification to the Indian Tribe Trust, whether material or minor, before such modification shall become effective. This Notice commences that 30 day Notice period as of the date hereof.

In addition to this notice period, material modifications to the Indian Tribe Trust may be made only with the written consent of the United States and upon Court Order, and only to the extent that such modification does not change or inhibit the purpose of the Indian Tribe Trust. The consent of the Trustee and the Defendants are also required in connection with modifications that affect their rights.

On March 2, 2018, the U.S. District Court for the Northern District of California issued the Order which imposed a stay on certain activities of the Trustee with respect to the Indian Tribe Trust.

The Order also required the United States and interested Beneficiaries to meet and confer, in consultation with the Trustee, to discuss whether any adjustment to the allocation methodology applicable when approvable funding requests from Beneficiaries exceed available funding is necessary to ensure that the Indian Tribe Trust funds are distributed in a manner that is consistent with the purpose of the Indian Tribe Trust.

The United States through the Department of Justice Office of Tribal Justice held telephonic discussion sessions on March 21, 2018 and March 27, 2018 with Indian Tribes. The United States also received and reviewed the oral and written comments received thereafter from the Indian Tribes.

The United States was required to file a report with the Court by no later than May 2, 2018. The United States filed a status report with the Court on May 1, 2018 (the “May 1st Status Report”), requesting additional time to complete the process. A copy of the May 1st Status Report is attached hereto.

On May 21, 2018, the United States through the Department of Justice Office of Tribal Justice held a third discussion session focused on a narrowed set of specific allocation concepts that could potentially form the basis of a new allocation formula. Representatives from approximately 33 Indian Tribes participated and provided input during the session, and were invited to submit written comments by no later than July 2, 2018.

In the May 1st Status Report, the United States informed the Court that it would either lodge a proposed modification to the Trust Agreement pending receipt of comments from interested Indian Tribes or would file another status report with the Court. The United States filed a status report with the Court on June 1, 2018 (the “June 1st Status Report”), requesting additional time to complete the process. A copy of the June 1st Status Report is attached hereto.

In accordance with the June 1st Status Report, the United States filed a “Notice of Proposed Material Modifications to Indian Tribe Trust Agreement” on June [21], 2018, and has lodged a copy of the modified Indian Tribe Trust Agreement with the Court. A copy of the United States’ Notice of Proposed Material Modifications to the Indian Tribe Trust Agreement is attached hereto.

The United States is inviting Indian Tribes to submit written comments by no later than **July 23, 2018**. Indian Tribes should submit their written comments on the proposed modifications to the Trust Agreement to the United States Department of Justice via email at the following address:

pubcomment-ees.enrd@usdoj.gov

or (if necessary) via regular mail to:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
U.S. Department of Justice - ENRD
Env. Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

In accordance with the Order, the stay imposed by the Order remains in place until further Court action.

Any questions you may have regarding this Notice should be jointly addressed in writing to the following:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe
Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services

Wilmington, DE 19890
Facsimile: 302 636-4145

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

BY: Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions
Environmental Mitigation Trust for Indian Tribe Beneficiaries

DATE: June 21, 2018



U.S. Department of Justice

Office of Tribal Justice

Room 2318, RFK Main Justice Building (202) 514-8812
950 Pennsylvania Avenue, N.W. FAX (202) 514-9078
Washington, D.C. 20530-0001

June 25, 2018

Dear Tribal Leader:

This letter follows up on our letters of March 16, 2018, March 27, 2018, and May 10, 2018, and the related discussion sessions regarding possible modifications to the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). On September 19, 2017, the Court approved the Trust Agreement, which established the Indian Tribe Trust (Trust). The Trust is administered by a Trustee, Wilmington Trust, N.A.

On January 29, 2018, the Trustee filed notice with the Court that 29 Indian Tribes had qualified as Beneficiaries under the Trust, and that 27 of those Beneficiaries had submitted requests for funding of Eligible Mitigation Action projects in the first funding cycle under the Trust. One of those 27 Beneficiaries did not receive a DERA Award from the U.S. Environmental Protection Agency and is not eligible to participate in the first funding cycle. On March 2, 2018, the United States and the parties to the Trust Agreement, namely the Defendants and the Trustee, informed the Court that the amount of approvable funding requests from the Beneficiaries exceeded the amount of available funding in the first funding cycle, and that if funds are distributed for the first funding cycle in accordance with the applicable allocation method in the Trust, the result would be inconsistent with the purpose of the Trust. The Court issued an Order directing the United States and interested Beneficiaries to meet and confer, in consultation with the Trustee, to discuss whether any adjustment to the Trust's allocation methodology, which is applicable when approvable funding requests from Beneficiaries exceed available funding, is necessary to ensure that the Trust funds are distributed in a manner that is consistent with the purpose of the Trust.

On June 22, 2018, based on the comments received pursuant to the United States' three discussion sessions with participating Indian Tribes and the United States' consultation with the Trustee, the United States filed with the Court a "Notice of Proposed Material Modifications to Indian Tribe Trust Agreement" (Notice). The Notice contained a copy of the modified Trust Agreement. (See attachment.) In the Notice, the United States informed the Court that the United States will accept written comments from Beneficiaries and potential Beneficiaries of the Trust Agreement regarding the proposed modifications to the Trust Agreement for a period of 30 days after the Trustee has provided notice to the Beneficiaries pursuant to Paragraph 6.5 of the Trust Agreement. At the

conclusion of the comment period, the United States will advise the Court regarding any further action that may be required at that time.

On June 22, 2018, pursuant to Paragraph 6.5 of the Trust Agreement, the Trustee provided notice of the proposed material modifications to Beneficiaries and potential Beneficiaries of the Trust. In accordance with the Notice filed on June 22, 2018, the United States invites you to submit written comments regarding the modified Trust Agreement.

Deadline for Written Comments

The deadline for providing any written comments is as follows:

Monday, July 23, 2018.

Please submit any written comments by no later than **July 23, 2018**, via email to pubcomment-ees.enrd@usdoj.gov or (if necessary) via regular mail to:

Chief, Environmental Enforcement Section

Re: DJ # 90-5-2-1-11386

U.S. Department of Justice - ENRD

Env. Enforcement Section

P.O. Box 7611

Washington, D.C. 20044-7611

We look forward to working with you on this important issue.

Sincerely,



Gina L. Allery

Deputy Director

Office of Tribal Justice

U.S. Department of Justice

Attachment (Notice of Proposed Material Modifications to Indian Tribe Trust Agreement)

1 BRUCE S. GELBER
Deputy Assistant Attorney General
2 Environment and Natural Resources Division

3 JOSHUA H. VAN EATON (WA-39871)
4 BETHANY ENGEL (MA-660840)
5 ROBERT D. MULLANEY (CA-116441)

6 U.S. Department of Justice
7 P.O. Box 7611
Washington, D.C. 20044-7611
8 Telephone: (202) 514-5474
9 Facsimile: (202) 514-0097
Email: Josh.Van.Eaton@usdoj.gov

10 Attorneys for Plaintiff United States of America

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 CRB (JSC)
17 MARKETING, SALES PRACTICES, AND)
18 PRODUCTS LIABILITY LITIGATION) **NOTICE OF UNITED STATES’ CONSENT**
19) **TO MODIFICATIONS TO INDIAN TRIBE**
20) **TRUST AGREEMENT AND**
21) **MEMORANDUM IN SUPPORT OF ITS**
22) **REQUEST FOR COURT APPROVAL OF**
23) **MODIFICATIONS**

24 This Document Relates to:)
25)
26 *United States v. Volkswagen AG et al.*,) Date: To be determined
27 Case No. 16-cv-295 (N.D. Cal.)) Time: To be determined
28) Courtroom 6, 17th Floor
The Honorable Charles R. Breyer
)
)

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NOTICE OF U.S. CONSENT TO MODIFICATIONS TO INDIAN TRIBE TRUST AGREEMENT AND REQUEST FOR COURT APPROVAL OF MODIFICATIONS1

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1 **NOTICE OF U.S. CONSENT TO MODIFICATIONS TO INDIAN TRIBE TRUST**
 2 **AGREEMENT AND REQUEST FOR COURT APPROVAL OF MODIFICATIONS**

3 TO ALL PARTIES AND COUNSEL OF RECORD:

4 On September 19, 2017, this Court approved the Environmental Mitigation Trust Agreement for
 5 Indian Tribe Beneficiaries (“Indian Tribe Trust Agreement,” “Trust Agreement” or “Trust”), which the
 6 United States then filed with the Court on October 2, 2017. *United States v. Volkswagen AG et al.*, Case
 7 No. 16-cv-295 (N.D. Cal.) (hereafter “*U.S. v. VW*”), Dkt. Nos. 49, 51-2. Pursuant to Paragraph 6.5 of
 8 the Trust Agreement (*id.*, Dkt. No. 51-2 at 37),¹ the United States hereby provides written notice that it
 9 consents to certain material modifications to the Trust Agreement. These modifications are contained in
 10 the Trust Agreement appended to this Notice as Attachment A.

11 PLEASE TAKE NOTICE that on _____, 2018, or at such other date as may be
 12 agreed upon, in Courtroom 6 of the United States District Court for the Northern District of California,
 13 located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff the United States will and
 14 hereby does request this Court, pursuant to Paragraph 6.5 of the Trust Agreement, to approve certain
 15 material modifications to the Trust Agreement. See Attachment A.

16 The Partial Consent Decree and the Second Partial Consent Decree in *In re: Volkswagen “Clean*
 17 *Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC)
 18 (hereafter “*MDL Litigation*”), set forth the requirements for the establishment of a trust. *Id.*, Dkt. No.
 19 2103-1 at 15-19, ¶¶14-17, 182-225, Appendix D (Form of Environmental Trust Agreement); Dkt. No.
 20 3228-1 at 17-18, ¶¶17-19. The United States is not required to hold a comment period regarding a
 21 modification of the Trust Agreement pursuant to the Partial Consent Decree, the Second Partial Consent
 22 Decree, or the Indian Tribe Trust Agreement. However, in the notice of proposed material
 23 modifications to the Trust Agreement filed on June 21, 2018, the United States agreed to accept
 24 comments from Beneficiaries and potential Beneficiaries regarding the proposed modifications to the
 25 Trust Agreement for a 30-day period after the Trustee provided notification to the Beneficiaries of the

26 _____
 27 ¹ In this brief, all page references to a Court document are to those pages in the header of the Court
 28 document (e.g., page 37 of 80).

1 proposed modifications. *U.S. v. VW*, Dkt. No. 62 at 2. That comment period ended on July 23, 2018.
 2 Together with this Notice, the United States includes in Attachment C a copy of written comments it
 3 received during the 30-day comment period as well as written comments from three prior discussion
 4 sessions that the United States held with Indian Tribes. The United States' responses to comments is
 5 included as Attachment D to this Notice.

6 In accordance with Paragraph 6.5 of the Trust Agreement (*id.*, Dkt. No. 51-2 at 37, ¶6.5), the
 7 Defendants² and Wilmington Trust, N.A., the Court-appointed Trustee (*MDL Litigation*, Dkt. No. 3030
 8 at 2), have consented to the terms of the modified Trust Agreement filed with this Court as Attachment
 9 A to this Notice. As set forth in the memorandum in support of this request, the Court should approve
 10 the modified Trust Agreement because the modifications further the purpose of the Trust Agreement, the
 11 Partial Consent Decree, and the Second Partial Consent Decree. *U.S. v. VW*, Dkt. No. 51-2 at 6, ¶2.0.3;
 12 *MDL Litigation*, Dkt. No. 2103-1; Dkt. No. 3228-1. Accordingly, the United States now respectfully
 13 requests that the Court sign and enter a proposed Order approving the Trust Agreement as modified.³

14 MEMORANDUM IN SUPPORT OF REQUEST

15 I. INTRODUCTION

16 In this memorandum, the United States provides the Court with the Indian Tribe Trust
 17 Agreement (see Attachments A and B), reflecting modifications that have been consented to by the
 18 United States, the Defendants, and the Trustee, pursuant to Paragraph 6.5 of the Trust Agreement. *U.S.*
 19 *v. VW*, Dkt. No. 51-2 at 37, ¶6.5.⁴ Because these changes include material modifications to the Trust
 20 Agreement, the United States seeks Court approval as required by Paragraph 6.5. *Id.*

21 Section II of this memorandum summarizes the pertinent requirements of the Partial Consent
 22

23 ² The term "Defendants" refers to the entities named in the United States' Complaint, specifically
 24 Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga
 Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc.

25 ³ A proposed Order is attached to this Notice as Attachment G.

26 ⁴ Attachment A is the proposed modified Trust Agreement presented for the Court's approval.
 27 Attachment B is a redlined version of the Trust Agreement that highlights the minor modifications and
 clarifying amendments made to the Trust Agreement that was lodged with the Court on June 21, 2018,
 prior to the comment period. *U.S. v. VW*, Dkt. No. 62.

1 Decree and Second Partial Consent Decree establishing the Trust Agreement as well as the Trust
2 Agreement's requirements. Section III briefly outlines the material changes that were made to the Trust
3 Agreement following this Court's March 2 Order (*MDL Litigation*, Dkt. No. 4867), and explains why
4 those changes further the purpose of the Partial Consent Decree and Second Partial Consent Decree by
5 establishing a sound framework to fund Eligible Mitigation Actions proposed by the Beneficiaries to
6 achieve reductions of nitrogen oxide ("NOx") emissions in the United States. The United States also
7 summarizes comments received during the public comment period and explains why the Court should
8 approve the modifications. In Section IV, the United States describes several minor modifications and
9 clarifying amendments to the Trust Agreement. Pursuant to Paragraph 6.5 of the Trust Agreement,
10 minor modifications and clarifying amendments to the Trust Agreement may be made upon written
11 agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate
12 the provisions of the Trust Agreement, and shall be filed with the Court. *U.S. v. VW*, Dkt. No. 51-2 at
13 37, ¶6.5. The United States and the Trustee agreed to these minor modifications, which are incorporated
14 in the modified Trust Agreement filed with the Court as Attachment A to this Notice.

15 **II. BACKGROUND**

16 **A. The Indian Tribe Trust Agreement and the State Trust Agreement**

17 Pursuant to Paragraph 14 of the Partial Consent Decree and Paragraph 17 of the Second Partial
18 Consent Decree, the Defendants were required to make a total of \$2.9 billion in Mitigation Trust
19 Payments to a Trust "to be used to fund Eligible Mitigation Actions to achieve reductions of NOx
20 emissions in accordance with the Trust Agreement." *MDL Litigation*, Dkt. Nos. 2103-1 at 15, 3228-1 at
21 17. The Partial Consent Decree included a form of a trust agreement in Appendix D, and provided that
22 the trust agreement would be finalized after the selection and appointment of a trustee. *Id.*, Dkt. No.
23 2103-1 at 18, ¶16, and 182-225, Appendix D.

24 On March 15, 2017, the Court appointed Wilmington Trust as the Trustee. *Id.*, Dkt. No. 3030 at
25 2. Pursuant to the Partial Consent Decree, the United States negotiated with the Trustee, the State
26 Beneficiaries, and the Defendants, and consulted with representatives of the Indian Tribe Beneficiaries,
27 to finalize the Indian Tribe Trust Agreement and a separate Environmental Mitigation Trust Agreement
28

1 for State Beneficiaries (“State Trust Agreement”). *Id.*, Dkt. No. 2103-1 at 18, ¶16, and 185, ¶2.1.1. On
 2 September 19, 2017, this Court issued an Order approving the Indian Tribe Trust Agreement as well as
 3 the State Trust Agreement. *U.S. v. VW*, Dkt. No. 49.

4 In the State Trust Agreement, the allocation among the States, Puerto Rico, and the District of
 5 Columbia is primarily based on the number of registered “Subject Vehicles,” as defined in ¶1.20 of the
 6 State Trust Agreement (*id.*, Dkt. No. 51-1 at 5), within the boundaries of each governmental entity.
 7 *MDL Litigation*, Dkt. No. 1973 at 22-23. Consequently, those State Beneficiaries with more registered
 8 Subject Vehicles received a larger allocation of trust funds. See, e.g., *U.S. v. VW*, Dkt. No. 51-1 at 45,
 9 47 (allocation tables).

10 Registration information for Subject Vehicles was not available for all Indian Tribes. In contrast
 11 to the specific amounts allocated to each governmental entity in the State Trust Agreement (*id.*), the
 12 Indian Tribe Trust Agreement set aside a single amount in the “Tribal Allocation Subaccount” for all
 13 Indian Tribe Beneficiaries. *Id.*, Dkt. No. 51-2 at 47, 49 (allocation tables). The Trustee is authorized to
 14 distribute funds from the Tribal Allocation Subaccount among the Indian Tribe Beneficiaries to fund
 15 Eligible Mitigation Actions to be proposed and administered by the Beneficiaries. *Id.*, ¶2.0.3 (Trust
 16 purpose), ¶2.1.1 (funding and use of the Tribal Allocation Subaccount).

17 After the Partial Consent Decree was entered, the United States conducted a 60-day consultation
 18 process with representatives of Indian Tribes Beneficiaries. *MDL Litigation*, Dkt. Nos. 2103-1 at 185,
 19 ¶2.1.1. In response to comments from the Indian Tribes during the consultation period, the United
 20 States explained that since the establishment of the Diesel Emissions Reduction Act (“DERA”) program
 21 in 2005, 42 U.S.C. §§ 16131-16139, the Environmental Protection Agency (“EPA”) had gained
 22 considerable experience in the implementation of NOx mitigation projects. Declaration of Robert
 23 Mullaney in Support of United States’ Request for Court Approval of Modifications to the Indian Tribe
 24 Trust Agreement (“Mullaney Decl.”), ¶3, Exh. A at 2.⁵ Based on EPA’s experience administering the
 25 Tribal DERA program,⁶ the United States stated that “the amount of funds available in each year” in the

26 ⁵ The declaration is attached to this Notice as Attachment E.

27 ⁶ EPA’s Tribal Clean Diesel Funding Assistance Program is a component of EPA’s DERA program.
 28 Only federally-recognized Tribal governments, intertribal consortiums, and Alaskan native villages,

1 Indian Tribe Trust Agreement “should be sufficient to fund a majority of the requests in a given year.”
2 *Id.*, Exh. A at 4. Consistent with that expectation, the Indian Tribe Trust Agreement’s general allocation
3 scheme for each funding cycle provides: “In the event that the total amount of the funding requests
4 received on any submission deadline is less than the total amount of funds available to be committed
5 during the corresponding funding cycle, the Trustee shall make no adjustments to the funding requests
6 before processing funding requests pursuant to subparagraph 5.2.16.” *U.S. v. VW*, Dkt. No. 51-2 at 27,
7 ¶5.0.5.2.2. In other words, in a funding cycle where available funding is adequate to meet the total
8 amount of funding requests, each Indian Tribe Beneficiary, without regard to its population, would be
9 eligible to receive the total amount of its funding request subject to the Trustee’s review and approval
10 authority in subparagraph 5.2.16. *Id.* at 30. The Trust Agreement also contains a strictly population-
11 based formula for allocation in subparagraph 5.0.5.2.3, which applies only if the Trustee determines that
12 the amount of approvable funding requests from the Beneficiaries exceeds the amount of funding
13 available for a funding cycle (referred to as an “oversubscribed funding cycle”). *Id.* at 27, ¶5.0.5.2.3.
14 Moreover, the application of a population-based allocation is expressly limited to that oversubscribed
15 funding cycle: “such tribal allocation shall only apply to the oversubscribed funding cycle.” *Id.*

16 B. The Oversubscribed First Funding Cycle

17 On January 29, 2018, the Trustee filed a Notice of Beneficiary Designation in which it listed 29
18 Indian Tribes as Beneficiaries under the Indian Tribe Trust Agreement. *MDL Litigation*, Dkt. No. 4701.
19 According to the Notice, 27 of these Indian Tribes were eligible to participate in the first funding cycle
20 under the Trust Agreement. *Id.* at 5.

21 Pursuant to the Trust Agreement, the Trustee reviewed the Beneficiaries’ Eligible Mitigation
22 Action funding requests. Contrary to the United States’ expectation that the amount of available Trust
23 funds in a funding cycle would suffice to meet the Beneficiaries’ funding requests (Mullaney Decl., ¶3,
24 Exh. A at 4), the Trustee determined that the total amount of funding requests resulted in an
25 oversubscribed funding cycle. *U.S. v. VW*, Dkt. No. 51-2 at 27, ¶5.0.5.2.3. The United States, the

26 _____
27 which have jurisdiction over transportation or air quality, are eligible to apply for assistance under this
28 competitive grant program.

1 Trustee, and the Defendants informed the Court about the oversubscription for the first funding cycle,
2 explaining that if Trust funds were distributed in accordance with the applicable population-based
3 allocation method, the result would be inconsistent with the purpose of the Indian Tribe Trust. *MDL*
4 *Litigation*, Dkt. No. 4867 at 2.

5 On March 2, 2018, the Court issued an Order directing the United States to meet and confer with
6 interested Beneficiaries of the Indian Tribe Trust Agreement, in consultation with the Trustee, to
7 determine whether an adjustment to the Trust Agreement's allocation method is necessary to ensure that
8 Trust funds are distributed in a manner consistent with the Trust's purpose. *Id.* at 3 (hereafter "March 2
9 Order"). The Court also ordered the Trustee to take no further actions relating to its obligations under
10 Section V (Distribution of Indian Tribe Mitigation Trust Assets) of the Trust Agreement until otherwise
11 ordered by the Court. *Id.*

12 Pursuant to the Court's March 2 Order, the United States, through the Office of Tribal Justice at
13 the U.S. Department of Justice, invited interested Indian Tribes to participate in three discussion
14 sessions regarding the Trust Agreement on March 21, March 27, and May 21, 2018, and to provide
15 written comments. *U.S. v. VW*, Dkt. No. 58 at 2-3. The United States filed two status reports to inform
16 the Court about this process on May 1 and June 1, 2018. *Id.*, Dkt. Nos. 56, 58. During this process, the
17 United States reviewed and considered the oral and written comments received from Indian Tribes, and
18 worked with the Trustee to revise the Trust Agreement to reflect proposed modifications to the Trust
19 Agreement. *Id.*, Dkt. No. 58 at 3. On June 21, 2018, the United States filed a Notice with the Court,
20 attaching a copy of proposed modifications to the Trust Agreement. *Id.*, Dkt. No. 62.

21 **III. THE UNITED STATES REQUESTS THE COURT TO APPROVE THE MATERIAL**
22 **MODIFICATIONS TO THE TRUST AGREEMENT.**

23 The United States submitted a redlined form of the Trust Agreement to the Court on June 21,
24 2018, that highlighted the proposed modifications to the Trust Agreement. *Id.* In this Section III, the
25 United States presents an overview, comparing provisions of the current Trust Agreement filed with the
26 Court on October 2, 2017 (*id.*, Dkt. No. 51-2), with material modifications contained in the proposed
27 modified Trust Agreement. *Id.*, Dkt. No. 62. The United States now requests the Court to approve these
28

1 modifications because they ensure that Trust funds are distributed in a manner consistent with the
 2 Trust’s purpose, and establish a sound framework to fund Eligible Mitigation Actions proposed by the
 3 Beneficiaries to achieve NOx reductions in the United States.

4 A. The Application of the Hybrid Allocation Formula Results in a More Equitable
 5 Distribution of Trust Funds to Beneficiaries.

6 The current Trust Agreement provides two methods for allocation of Trust funds. If the total
 7 funding requests from Beneficiaries are less than the amount of funds available to be committed in a
 8 funding cycle, the Trustee does not adjust the funding requests and proceeds directly to processing the
 9 funding requests under subparagraph 5.2.16. *Id.*, Dkt. No. 51-2 at 27, ¶5.0.5.2.2. If the total funding
 10 requests from Beneficiaries exceed the amount of funds available to be committed in a funding cycle
 11 (i.e., an oversubscribed funding cycle), the Trust Agreement provides that the Trustee should instead
 12 apply a strictly population-based formula to distribute the Trust funds. *Id.*, ¶5.0.5.2.3.

13 Application of the strictly population-based formula would have led to an inequitable result in
 14 the first funding cycle in which 27 Indian Tribes (previously designated by the Trustee as Beneficiaries,
 15 *MDL Litigation*, Dkt. No. 4701) had submitted requests for funding of Eligible Mitigation Action
 16 projects pursuant to the Trust Agreement.⁷ Specifically, it would have required the Trustee to distribute
 17 a vast majority of the Trust funds to the three largest Indian Tribes and to provide the smaller Tribes
 18 with allocations that would have been inadequate to fund any Eligible Mitigation Action.⁸ Such a result
 19 would have thwarted the purpose of the Indian Tribe Trust Agreement, which is intended “to timely and
 20 efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries.” *U.S.*

21 ⁷ Subsequently, one of these 27 Tribes failed to receive a DERA award from EPA and is ineligible to
 22 participate in the first funding cycle, leaving a total of 26 Beneficiaries participating in the first funding
 cycle. *U.S. v. VW*, Dkt. No. 62 at 32 and n.2. This does not change the analysis.

23 ⁸ For example, the three largest Tribes, the Muscogee (Creek) Nation, the Cherokee Nation, and the
 24 Chickasaw Nation, would have received a total allocation of \$5,514,388, amounting to 91.6% of
 \$6,020,321, the total amount of funds available for distribution. See Declaration of David A. Vanaskey,
 25 Jr., on Behalf of Wilmington Trust, N.A., as Trustee, in Support of the United States’ Request for Court
 Approval of Modifications to the Indian Tribe Trust Agreement (“Vanaskey Decl.”), Exh. B, which is
 26 attached to this Notice as Attachment F. In contrast, seven smaller Indian Tribes would have received
 27 distributions of less than \$1,000. *Id.*, ¶10. For example, Beaver Village, which had submitted a funding
 request of \$68,348 to the Trustee, would have received a distribution of \$344. *Id.*, Exh. B.

1 v. VW, Dkt. No. 51-2 at 6, ¶2.0.3. Under the Trust Agreement, the term “Beneficiary” is broadly defined
2 to include “each Indian Tribe determined to be a Beneficiary pursuant to Section IV (Indian Tribe
3 Mitigation Trust Beneficiaries)” of the Trust Agreement. *Id.* at 3, ¶1.1. The distribution of the Trust’s
4 benefits was not intended to be limited to a handful of larger Indian Tribes, nor were the smaller Indian
5 Tribes intended to be effectively precluded from meaningful access to the Trust’s funds.

6 After the Court issued its March 2 Order, the United States conferred with interested Indian
7 Tribes, in consultation with the Trustee, to discuss possible modifications to the Trust Agreement’s
8 allocation formula. Based on comments from participating Indian Tribes and after consultation with the
9 Trustee, the United States proposed a modified allocation formula for the first funding cycle consisting
10 of the following three steps:

11 Step 1: Per Capita Allocation - the Trustee will allocate 50 percent of the available funding
12 equally among the 26 participating Beneficiaries (*id.*, Dkt. No. 62 at 35, ¶5.0.5.3.2);

13 Step 2: Pro Rata Population-based Allocation - the Trustee will allocate the remaining 50
14 percent of the available funding into three separate funding pools (“Groups”) based on the Jenks
15 natural breaks optimization method (“Jenks”).⁹ *Id.* at 34-35, ¶5.0.5.3.1. The Trustee will assign
16 51.52 percent of the available funding to Group One, 10.61 percent to Group Two, and 37.87
17 percent to Group Three based on the relative population of each Group, and will then allocate an
18 amount to each participating Beneficiary based on the pro rata share of the participating
19 Beneficiary’s population to the total population of all the participating Beneficiaries within its
20 Group (*id.* at 35, ¶5.0.5.3.2); and

21 Step 3: Funding Limit - the Trustee will limit the amount of funding for a Beneficiary to no
22

23 ⁹ The Jenks data clustering method is a generally accepted approach to create groupings when there is
24 only one delimiting statistic. In this case, the Trust Agreement established population as the delimiting
25 statistic by which the Beneficiaries can receive Trust funds. The Jenks method uses computer
26 calculations to calculate every possible grouping in order to determine which grouping will best meet
27 two goals: (1) values within each group should be as similar as possible; and (2) values across each
28 group should be as different as possible from the values in any other group. The application of this
Jenks method is reflected in an Alignment Table, Appendix D-8 to the modified Trust Agreement. *U.S.*
v. VW, Dkt. No. 62 at 100-123. The Alignment Table will be used to determine the population of each
Indian Tribe for the pro rata population-based allocation portion of the modified allocation formula (*id.*
at 34-35, ¶5.0.5.3.1), and is discussed in more detail in Section III.C. below.

1 more than the Beneficiary requested in its original funding request and will reallocate the
2 remaining amount to the other Beneficiaries. *Id.*

3 Application of this hybrid allocation formula results in a more equitable distribution of Trust
4 funds to the 26 Beneficiaries participating in the first funding cycle. In considering the equities, one key
5 issue to resolve concerned the wide disparity in the population sizes of Indian Tribe Beneficiaries.¹⁰
6 The proposed allocation formula uses the 2010 U.S. Census data for each Beneficiary and then applies
7 the Jenks method to separate the 568 federally recognized Indian Tribes into three Groups based on
8 population. The 26 Beneficiaries in the first funding cycle are distributed across the three Jenks Groups
9 as follows: (1) 23 are in Group One; (2) one is in Group 2; and (3) two are in Group 3. *Id.*, Dkt. No. 62
10 at 100 (Appendix D-8). By using the hybrid allocation formula, four Indian Tribes in Jenks Group One
11 will receive the full amount of their original funding requests and one Tribe will receive 95 percent of its
12 request. Vanaskey Decl., Exh. C (e.g., Beaver Village will be allocated \$68,348). Eighteen other Indian
13 Tribes in Group One will receive significantly less than they originally requested, but they will still
14 receive an allocation ranging from \$116,280 to \$400,278, depending on the Indian Tribe's population.
15 *Id.* The Chickasaw Nation, the Group Two Indian Tribe, will receive an allocation equal to 95 percent
16 of its funding request. *Id.* The two Indian Tribes in Group Three, the Cherokee Nation and the
17 Muscogee (Creek) Nation, will receive less than they requested but will receive substantial amounts,
18 \$808,789 and \$665,208 respectively. *Id.* For illustrative purposes, a table showing the full first cycle
19 funding for each of the 26 Beneficiaries is attached as Exhibit C to the Vanaskey Declaration. *Id.*

20 In sum, this hybrid allocation formula will allocate sufficient funding to all 26 Beneficiaries to
21 complete at least one Environmental Mitigation Action project, thereby serving the Trust's purpose "to
22 timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the
23 Beneficiaries. . . ." *U.S. v. VW*, Dkt. No. 62 at 9, ¶2.0.3. Moreover, if a Beneficiary does not receive an
24 allocation in the first funding cycle equivalent to its original funding request, that Beneficiary can
25 choose to participate in future funding cycles and submit additional funding requests to the Trustee. See

26 _____
27 ¹⁰ According to Table PCT4 of the 2010 U.S. Census data, for the 26 Beneficiaries in the first funding
28 cycle, the population ranges from an Indian Tribe with 30 members to an Indian Tribe with 125,440
members. See Vanaskey Decl., Exh. C (column listing "total population per U.S. Census Table PCT4").

1 *id.* at 28, ¶4.0.2.4 (once an Indian Tribe has been certified as a Beneficiary under the Trust Agreement, it
2 remains a Beneficiary and may apply for funding in all future funding cycles).

3 The hybrid allocation formula, 50 percent based on a per capita allocation and 50 percent based
4 on a pro rata population-based allocation, will also apply in all future funding cycles in the modified
5 Trust Agreement. *Id.* at 37-38, ¶5.0.5.3.3 (second through fourth funding cycles); 39-40, ¶5.0.5.3.5
6 (fifth funding cycle).¹¹ However, as explained below in Section III.B., a modification of the funding
7 request procedure in the second through fifth funding cycles will permit a Beneficiary to know the
8 amount of its allocation before the Beneficiary is required to submit a funding request, which eliminates
9 the need in future funding cycles for the imposition of a funding limit (i.e., step three of the hybrid
10 allocation method described above), as proposed for the first funding cycle.

11 B. The Modification of the Trust Agreement Serves the Trust's Purpose by Fully Funding
12 the Second Funding Cycle, Reducing the Number of Funding Cycles, and Simplifying the
13 Funding Request Procedure for Beneficiaries.

14 The current Trust Agreement contained six primary funding cycles with the possibility of two
15 extra funding cycles to distribute any remaining Trust funds. *Id.*, Dkt. No. 51-2 at 27-29, ¶¶5.0.5.2.1,
16 5.0.5.2.5, 5.0.5.2.7. The first funding cycle's deadline for a funding request was January 2, 2018, 90
17 days after the Trust's Effective Date; a September 1 deadline was set for funding cycles two through six.
18 *Id.* at 26, ¶5.0.5.2. The current Trust Agreement also required each Indian Tribe to file a Beneficiary
19 Status Certification Form (Appendix D-3) at the same time it filed its first funding request (Appendix D-
20 4). *Id.* at 21, ¶4.0.

21 According to the Trustee, the first funding cycle had approximately \$6 million available for
22 distribution to Beneficiaries; 27 Beneficiaries submitted funding requests amounting to more than \$33
23 million. Vanaskey Decl., ¶¶6, 8, Exh A, Exh. B. Under the current Trust Agreement, Beneficiaries
24 were required to spend their time and resources preparing a funding request in order to qualify for

25 _____
26 ¹¹ At the request of the United States, the Trustee calculated hypothetical allocation ranges for
27 illustrative purposes, using the hybrid allocation formula across four funding cycles with different
28 numbers of participating Indian Tribe Beneficiaries ranging from 26 to 568 participants. *See* Vanaskey
Decl., ¶16, Exh. D.

1 consideration for funding, but they faced considerable uncertainty in an oversubscribed funding cycle
2 regarding the amount of Trust funds that would be available for allocation. Moreover, in an
3 oversubscribed funding cycle, the Trustee was obligated to use the Trust’s resources to review
4 Beneficiaries’ funding requests even though the Trust did not have sufficient funds available for
5 distribution to each Beneficiary.

6 Based on EPA’s experience administering the Tribal DERA program, the United States had
7 anticipated that the amount of funds available in each funding cycle in the Trust Agreement would be
8 sufficient to fund a majority of the funding requests from Beneficiaries. Mullaney Decl., ¶3, Exh. A at
9 4. The results of the first funding cycle show that this expectation was not well founded. On the
10 contrary, it appears likely that the funding requests submitted under the existing procedures would
11 exceed available funding in each funding cycle considering that: (1) all 568 federally recognized Indian
12 Tribes may elect to become Beneficiaries under the Trust Agreement (*U.S. v. VW*, Dkt. No. 62 at 5, ¶1.2
13 (definition of Beneficiary); 7, ¶1.19 (definition of Indian Tribe); and (2) funding requests from just 27
14 Beneficiaries greatly exceeded the amount available in the first funding cycle. Vanaskey Decl., ¶¶6, 8.

15 In response to comments from interested Beneficiaries, the modified Trust Agreement addresses
16 these funding issues. For example, the VW Defendants’ third and final payment into the Trust’s account
17 is due on November 25, 2018 (*MDL Litigation*, Dkt. No. 2103-1 at 15-16, ¶14.b.), which would have
18 occurred after the September 1 deadline for the second funding cycle under the current Trust Agreement.
19 To ensure that the Trust is fully funded before the second funding cycle commences, the modified Trust
20 Agreement postpones the filing deadline for a Beneficiary Status Certification Form (Appendix D-3) in
21 the second and subsequent funding cycles from September 1 to December 3, and defines the amount
22 (“remaining assets”) available for distribution in each funding cycle. *Id.*, Dkt. No. 62 at 26-27, ¶4.0, 33-
23 34, ¶5.0.5.2. This three-month shift in the deadline maximizes the amount of funding earlier, making
24 approximately one-third of the Trust’s remaining assets available for the Trustee to distribute to
25 Beneficiaries in the second funding cycle. *Id.* at 33, ¶5.0.5.2.

26 The modified Trust Agreement also reduces the number of funding cycles from six to four,
27 increasing the amount of funding available to allocate to Beneficiaries for Eligible Mitigation Actions in
28

1 each cycle for years two through four. *Id.*¹² As a corollary benefit, this modification will also allow the
2 Beneficiaries to have quicker access to the total Trust funds.

3 Finally, the modified Trust Agreement simplifies the procedure for a Beneficiary to qualify for
4 funding for the second through fourth funding cycles by separating the time for submitting a Beneficiary
5 Status Certification Form (Appendix D-3) from the deadline for a funding request (Appendix D-4).
6 Under the modified Trust Agreement, the Trustee will first evaluate Beneficiary Status Certification
7 Forms (Appendix D-3) that are timely submitted in each funding cycle and will then designate Indian
8 Tribes as Beneficiaries. *Id.* at 27, ¶4.0.2. Thereafter, each Beneficiary interested in participating in a
9 given funding cycle can choose to submit a new one-page form, a standardized Designated Beneficiary's
10 Participation Notice (Appendix D-6). *Id.* at 37, ¶5.0.5.3.3. After determining the number of interested
11 Beneficiaries based on submittals of these Appendix D-6 notices, the Trustee - - knowing both the
12 number of interested Beneficiaries and the amount of Trust funds available for distribution in a funding
13 cycle -- will apply the same hybrid allocation formula (50 percent based on a per capita allocation and
14 50 percent based on a pro rata population-based allocation) as in the first funding cycle, and will provide
15 notice to each Beneficiary of the amount allocated to it. *Id.* Each participating Beneficiary will know
16 the precise amount of available funding, and can either submit to the Trustee a funding request for
17 Eligible Mitigation Actions (Appendix D-4) that is aligned with the amount allocated to that
18 Beneficiary, or can choose to opt out by submitting a new one-page form, a standardized Beneficiary's
19 Election to Opt Out Form (Appendix D-7). *Id.*¹³ This revised process not only spares the Beneficiaries
20 the wasted effort of preparing a funding request that is unrelated to the actual amount of its allocation, it
21 also conserves the Trust's resources otherwise spent in the Trustee's review and evaluation of funding
22

23 ¹² If the United States and the Trustee determine that there are sufficient Trust funds remaining after
24 four funding cycles, the modified Trust Agreement provides for a fifth funding cycle. *Id.*, Dkt. No. 62 at
25 39, ¶5.0.5.3.5. However, if the United States and the Trustee determine that there are insufficient funds
26 to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief,
27 which may include the authority for the Trustee to terminate the Indian Tribe Trust. *Id.* at 38-39,
28 ¶5.0.5.3.4; *see id.* at 45, ¶5.4.5 (Final Disposition of Indian Tribe Trust Assets); 52, ¶6.8 (Termination).

¹³ If a Beneficiary opts out, the amount allocated to it will be returned to the Tribal Allocation
Subaccount and made available to Beneficiaries in a future funding cycle. *U.S. v. VW*, Dkt. No. 62 at
36, ¶5.0.5.3.2.

1 requests that the Trust is unable to fund. Applying the hybrid allocation formula and the modified
2 procedures for its implementation will prevent an oversubscribed funding cycle from ever occurring. In
3 sum, these modifications further the Trust’s purpose “to timely and efficiently fund Eligible Mitigation
4 Actions to be proposed and administered by the Beneficiaries.” *Id.* at 9, ¶2.0.3.

5 C. The Addition of an Alignment Table (Appendix D-8) Will Provide Certainty and
6 Transparency to the Trustee’s Allocation Determination.

7 The current Trust Agreement provides that all federally recognized Indian Tribes may elect to
8 become a Beneficiary of the Trust by filing a Beneficiary Status Certification Form (Appendix D-3)
9 with the Court and providing a copy to the Trustee, which is responsible for ensuring that the form
10 complies with the Trust Agreement. *Id.*, Dkt. No. 51-2 at 21, ¶4.0. In addition, the current Trust
11 Agreement establishes a strictly population-based allocation for each Tribe in the event of an
12 oversubscribed funding cycle, relying generally on the 2010 United States Census to establish
13 population figures for Indian Tribes. *Id.* at 27, ¶5.0.5.2.3. However, the current Trust Agreement did
14 not provide the Trustee with a specific reference to a Census Table to determine the population of each
15 Indian Tribe.

16 The modified Trust Agreement uses population numbers reported in Table PCT4 of the 2010
17 United States Census (“Table PCT4”)¹⁴ to assign each Indian Tribe to one of three Jenks Groups, and
18 provides that 50 percent of available funding in a funding cycle will be allocated based on a pro rata
19 population-based allocation. *Id.*, Dkt. No. 62 at 34-38, ¶¶5.0.5.3.1, 5.0.5.3.2, 5.0.5.3.3. In order to
20 identify the population of each Indian Tribe, the United States, in consultation with the Trustee,
21 compared the Bureau of Indian Affairs’ current list of federally recognized Indian Tribes (“Federal
22 Register List”) to Table PCT4. This information was used to identify the population of each Indian
23 Tribe for the purposes of the Trust Agreement, and was compiled in an Alignment Table (Appendix D-
24 8) that the Trustee will use to determine the pro rata population-based allocation in each funding cycle.
25 *Id.* at 100-123. The Alignment Table sets out specific allocation rules for the Trustee to follow in cases

26 ¹⁴ Table PCT4 reports the total American Indian and Alaska Native population of American Indian and
27 Alaska Native geographic census areas, including reservations, off-reservation trust lands, and statistical
28 areas.

1 where a potential conflict exists between the Federal Register List of Indian Tribes and Table PCT4's
2 geographic census areas. *Id.* at 101-104; see also *id.* at 37-38, ¶5.0.5.3.3 (Step 3); 39-40, ¶5.0.5.3.5
3 (Step 3). Inclusion of the Alignment Table provides certainty and transparency with respect to the
4 Trustee's application of the hybrid allocation formula in the modified Trust Agreement.

5 D. None of the Comments Received during the Comment Period Warrant Disapproval of the
6 Proposed Trust Agreement as Modified.

7 The United States received 12 comments during the 30-day comment period after the proposed
8 modifications to the Trust Agreement were lodged with the Court, in addition to 43 written comments
9 received in connection with the three discussion sessions with participating Indian Tribes. The
10 comments received are attached in their entirety in Attachment C to this Notice. In Attachment D to this
11 Notice, the United States summarizes and responds to the issues raised by these comments, which are
12 grouped below into two broad categories: (1) the allocation formula in the Trust Agreement; and
13 (2) implementation issues under the Trust Agreement.

14 1. The Hybrid Allocation Formula Serves the Trust Agreement's Purpose.

15 In written comments, several Indian Tribes argued that a strictly population-based allocation
16 would have the closest nexus to the purpose of the Trust Agreement, which they asserted is the funding
17 of mitigation projects where the Subject Vehicles were, are, or will be operated. They opposed any
18 allocation formula that would increase the per capita share of smaller Tribes, arguing that this type of
19 allocation would come at the expense of the larger Tribes. Other Indian Tribes argued against a strictly
20 population-based allocation, pointing out that an Indian Tribe's population does not necessarily
21 correspond to the number of Subject Vehicles in an area. Some Indian Tribes advocated that the
22 allocation formula should take into account a Tribe's proximity to ozone and particulate nonattainment
23 areas, arguing that a smaller Tribe's members in an urban area are more affected by the adverse impact
24 of NOx emissions than a larger Tribe's members who live in a rural attainment area. Other Indian
25 Tribes proposed that the Trust's allocation formula should be tied to an implied purpose of broadly
26 distributing funding opportunities across Indian Country, and should provide a base amount for each
27 participating Indian Tribe in an amount sufficient to complete a mitigation project.

1 After review and consideration of these comments, the United States still believes that a strictly
2 population-based allocation is inconsistent with the Trust's purpose. The Trust Agreement was not
3 intended either to serve solely the interests of larger Indian Tribes or to preclude smaller Indian Tribes'
4 access to meaningful mitigation funds. In fact, the United States expected that the amount of Trust
5 funds available for distribution to Beneficiaries would be adequate to fund a majority of funding
6 requests in each year. Mullaney Decl., ¶3, Exh. A at 4. The general allocation formula in Trust
7 Agreement reflected this expectation, providing that if the total amount of funding requests is less than
8 the Trust funds available for distribution in a funding cycle, the Trustee should make no adjustments to
9 funding requests before processing the funding requests. *U.S. v. VW*, Dkt. No. 51-2 at 27, ¶5.0.5.2.2. In
10 other words, if the Trust funds had been adequate to meet the Beneficiaries' funding requests as the
11 United States had anticipated, each Beneficiary, without regard to its population, would have received
12 the entire amount that it had requested, subject to the Trustee's approval authority. This would have
13 enabled each participating Beneficiary to undertake a mitigation project of its choosing, satisfying the
14 Trust's purpose "to achieve reductions of NOx emissions in the United States." *Id.* at 6, ¶2.0.3 (Trust
15 Purpose).

16 In fact, funding requests from 26 Beneficiaries in the first funding cycle vastly exceeded the
17 United States' expectation, triggering the Trust Agreement's oversubscription formula. *Id.* at 27,
18 ¶5.0.5.2.3. Application of the oversubscription formula would have resulted in an allocation in which
19 the three largest Indian Tribes would have received over 90 percent of the Trust funds, leaving seven
20 Indian Tribes with very small distributions that would not permit them to fund mitigation projects.
21 Vanaskey Decl., ¶10, Exh. B. Such a result would have frustrated the purpose of the Trust Agreement
22 "to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the
23 Beneficiaries." *U.S. v. VW*, Dkt. No. 51-2 at 6, ¶2.0.3 (Trust Purpose).

24 After the Court issued its March 2 Order, the United States sought to devise an allocation
25 formula that would function in an equitable manner in light of the fact that Beneficiaries' funding
26 requests are likely to exceed the Trust's total funds available for distribution in each funding cycle. In
27 addition, given the wide dispersion of population among Indian Tribe Beneficiaries, the formula would

1 need to meet two disparate goals. First, the allocation should afford smaller Tribes with the means to
2 complete a mitigation project. Second, the allocation should take into account that a few larger Tribes
3 represent about 50 percent of the total American Indian and Alaska Native population.

4 The hybrid allocation formula is constructed to achieve these dual goals. Half of the Trust funds
5 available for distribution in a funding cycle will be allocated in equal shares on a per capita basis among
6 the participating Beneficiaries. This per capita allocation will broadly distribute funding opportunities
7 among Indian Tribes across the country. For the first cycle, the per capita allocation will result in an
8 allocation for each Beneficiary that will be adequate to fund a mitigation project.¹⁵ The other half of the
9 Trust funds will be allocated pro rata based on population. In this way, Tribes with larger populations
10 will have access to a greater Trust fund allocation than a smaller Tribe.

11 Funding for the Eligible Mitigation Actions provided for in the State Trust Agreement and the
12 Indian Tribe Trust Agreement is designed to fully mitigate the total, lifetime excess NOx emissions from
13 the Subject Vehicles. *U.S. v. VW*, Dkt. No. 62 at 4-5. Notably, neither Trust Agreement expressly tied
14 the allocation of funds to an area's nonattainment status. It would be a complex undertaking to track
15 and evaluate the impact of Subject Vehicles' emissions in any given area. Instead, the allocation of
16 funds in the State Trust Agreement is primarily based on a readily available metric - - the number of
17 Subject Vehicles registered in each State. *MDL Litigation*, Dkt. No. 1973 at 22. For example,
18 California, which has the largest number of registered Subject Vehicles, also received the largest
19 allocation under the State Trust Agreement. *U.S. v. VW*, Dkt. No. 51-1 at 49. Although car registration
20 information is not available for all Indian Tribes, each Indian Tribe is located in one or more States, and
21 all fifty States have been designated as Beneficiaries of the State Trust Agreement. *MDL Litigation*,
22 Dkt. No. 4700. Consequently, an Indian Tribe's members will also benefit from mitigation projects
23 undertaken by those States.

24
25 ¹⁵ Application of the per capita allocation would have resulted in a minimum allocation of
26 approximately \$115,000 per Indian Tribe in the first funding cycle. However, some Beneficiaries
27 submitted funding requests in the first funding cycle that were less than this amount. Vanaskey Decl.,
28 Exh. C. Because the allocation is limited to the amount that a Beneficiary requested in its original
funding request (*U.S. v. VW*, Dkt. No. 62 at 35-36, ¶5.0.5.3.2, Step 3), these Beneficiaries will receive
the full amount of funding that they originally requested. Vanaskey Decl., Exh. C.

1 The public comments received by the United States helped shape the modification of the Trust
2 Agreement. The United States requests the Court to approve these modifications because an adoption of
3 the hybrid allocation formula in the modified Indian Tribe Trust Agreement will ensure that the Trust's
4 funds are distributed in an equitable manner that is consistent with the Trust Agreement's purpose. In
5 contrast to a strictly population-based formula, the Trust's benefits will not be distributed solely to a few
6 larger Indian Tribes. Due to the per capita distribution, smaller Tribes will be able to fund a mitigation
7 action. At the same time, the pro rata population-based allocation reserves a considerable portion of
8 Trust funds for larger Indian Tribes, recognizing their important role in serving the needs of their
9 members. Thus, the hybrid allocation formula strikes a reasonable balance that will foster the timely
10 and efficient implementation of mitigation actions under the Trust Agreement for all Beneficiaries.

11 2. Other Procedural Modifications Will Serve to Improve the Implementation of the
12 Trust Agreement.

13 Many commenters offered proposed changes or objections to various terms in the modified Trust
14 Agreement. These comments are summarized and addressed at length in the United States' Response to
15 Public Comments in Attachment D. The United States, after consideration of comments and in
16 consultation with the Trustee, has sought to advance the Trust's purpose to timely and efficiently fund
17 Eligible Mitigation Actions by reducing the number of funding cycles, simplifying the funding request
18 procedure, and adding an Alignment Table (Appendix D-8) to provide certainty and clarity to the
19 Trustee's funding determination. None of the comments received demonstrates that these procedural
20 changes to the Trust Agreement are inconsistent with the Trust Agreement's purpose. The Court should
21 approve the modifications to the Trust Agreement because the United States has struck a reasonable
22 balance that "does not change or inhibit the purpose of this Indian Tribe Mitigation Trust." *U.S. v. VW*,
23 Dkt. No. 62 at 50, ¶6.5.

1 **IV. AFTER REVIEW OF COMMENTS, THE UNITED STATES AND THE TRUSTEE**
2 **HAVE AGREED TO A NUMBER OF MINOR MODIFICATIONS AND CLARIFYING**
3 **AMENDMENTS TO THE TRUST AGREEMENT AS REFLECTED IN THE MODIFIED**
4 **TRUST AGREEMENT.**

5 Pursuant to Paragraph 6.5 of the Trust Agreement, minor modifications and clarifying
6 amendments to the Trust Agreement may be made upon written agreement between the United States
7 and the Trustee, as necessary to enable the Trustee to effectuate the provisions of the Trust Agreement,
8 and shall be filed with the Court. *U.S. v. VW*, Dkt. No. 51-2 at 37, ¶6.5. After the Court issued its
9 March 2 Order, the United States carefully reviewed the comments it received on the proposed
10 modifications to the Trust Agreement, and conferred with the Trustee. Based on that process, in
11 addition to material modifications discussed above in Section III, the United States and the Trustee have
12 agreed to a discrete number of minor modifications and clarifying amendments to the Trust Agreement.

13 In summary, the agreed changes include:

- 14 • The addition in subparagraph 2.1.1.2 (Scope of Tasks) of a deadline for delivery of the technical
15 assistance provider's report relating to its review of the EMA Certification Forms.
- 16 • The addition in subparagraph 2.1.4 (Tribal Advisory Council) of clarifications regarding the
17 Tribal Advisory Council's purpose, and the technical assistance provider's role and reporting
18 obligation.
- 19 • The addition in subparagraph 3.1.2.6 clarifying that the United States can waive the requirement
20 of a semi-annual independent review of the Trust's financial statement.
- 21 • The clarification in subparagraph 3.3.1.5 of the role of the independent certified public
22 accounting firm;
- 23 • Subparagraph 5.0.5.2 (Four Funding Cycles) was modified for clarity and subparagraph 5.0.5.3.5
24 (Fifth Funding Cycle) was modified to be consistent with subparagraph 5.0.5.2.
- 25 • The addition in subparagraph 5.2.12 (DERA option) of a deadline for a Beneficiary to submit an
26 EPA DERA selection letter.

- 1 • The addition in subparagraph 5.2.16 (Approval of Funding Request) of deadlines for submittal of
2 additional information by a Beneficiary and the Trustee’s approval or rejection of a funding
3 request.
- 4 • The clarification in Paragraph 6.0 (Correspondence with Indian Tribe Trust) of information
5 available to Beneficiaries in the General Information folder via Intralinks.
- 6 • The addition in Paragraph 6.5 (Modification) of a provision regarding minor clarifying
7 amendments to the Trust Agreement regarding the technical assistance provider’s role.

8 These changes are incorporated in the modified Trust Agreement in Attachment A, and presented
9 in a redlined form of the Trust Agreement in Attachment B, which are filed with the Court together with
10 this Notice.

11 **V. CONCLUSION**

12 For the reasons stated herein, the United States requests the Court to approve the material
13 modifications to the Indian Tribe Trust Agreement. A proposed Order has been submitted concurrently
14 with this request.

15 Dated: August 14, 2018

Respectfully submitted,

For the United States of America

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ATTACHMENT A

Proposed Indian Tribe Trust Agreement as modified

**ENVIRONMENTAL MITIGATION TRUST AGREEMENT
FOR INDIAN TRIBE BENEFICIARIES
(as modified on August 13, 2018)**

On October 25, 2016, the Court entered a Partial Consent Decree (“First Partial Consent Decree”) in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the “Settling Defendants”), the United States, and the State of California. In that case, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the “Defendants”), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the “Trustee”): (1) hereby enter into this Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the “Indian Tribe Trust Agreement”) and establish the environmental mitigation trust described in that agreement (“Indian Tribe Mitigation Trust” or “Indian Tribe Trust”); and (2) concurrently enter into a separate Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the “State Trust Agreement”) and establish the environmental mitigation trust described in that agreement (the “State Mitigation Trust” or “State Trust”). The Defendants and the Trustee acknowledge that the purpose of the Indian Tribe Mitigation Trust and the State Mitigation Trust is to fulfill the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the Indian Tribe Mitigation Trust and the State Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the Indian Tribe Mitigation Trust and the State Mitigation Trust. The Indian Tribe Mitigation Trust and the State Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the First Partial Consent Decree and the Second Partial Consent Decree (jointly, the “Consent Decree”), and in accordance with the following allocation: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.01% to the Indian Tribe Mitigation Trust; and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.3% to the Indian Tribe Mitigation Trust.

PURPOSE AND RECITALS

Whereas, the Defendants are required to establish this Indian Tribe Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) where the Subject Vehicles were, are, or will be operated (“Eligible Mitigation Actions”), and to pay for Trust Administration Costs as set forth in this Indian Tribe Trust Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe

Trust Agreement and the State Trust Agreement is intended to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated;

Whereas, the Defendants hereby establish this Indian Tribe Mitigation Trust to provide funds for Eligible Mitigation Actions and Trust Administration Costs;

Whereas, the Trustee has been selected to be the trustee under this Indian Tribe Trust Agreement in accordance with the requirements set forth in the First Partial Consent Decree;

Whereas, the Trustee is willing to act as trustee in accordance with the terms of this Indian Tribe Trust Agreement;

Whereas, on August 13, 2018, the Defendants and the Trustee agreed to certain material modifications to the Indian Tribe Trust Agreement that are reflected herein;

Whereas, the United States will lodge the modified Indian Tribe Trust Agreement with the Court and will accept comments from interested Indian Tribes for a 30-day period after lodging; and

Whereas, after the comment period, the United States will either file a motion requesting the Court to approve the modifications in accordance with Paragraph 6.5 or seek other relief from the Court;

Now, therefore, the Defendants and the Trustee agree as follows:

I. DEFINITIONS

1.0 Unless otherwise defined in this Indian Tribe Trust Agreement, all capitalized terms used herein shall have the meaning set forth in the Consent Decree.

1.1 “2010 United States Census Table PCT4” shall mean Table PCT4 (entitled “American Indian and Alaska Native Alone or in Combination with One or More Other Races”) of the United States national census conducted by the U.S. Census Bureau in 2010.

1.2 “Beneficiary” shall mean each Indian Tribe determined to be a Beneficiary pursuant to Section IV (Indian Tribe Mitigation Trust Beneficiaries) and subparagraphs 2.1.2 and 5.0.5.

1.3 “Beneficiary Status Certification Form” shall mean the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form that is attached as Appendix D-3 to this Indian Tribe Trust Agreement.

1.4 “Business Day” means, with respect to any delivery requirement, deadline, or payment under this Indian Tribe Trust Agreement, each Monday, Tuesday, Wednesday, Thursday, and Friday that is not a day on which the Trustee in the State of Delaware or, as to a specific Beneficiary, a day on which that Beneficiary under this Indian Tribe Trust is authorized or obligated by law, regulation, or executive order to close.

1.5 “Claims” shall mean any and all losses, liabilities, claims, actions, suits, or expenses, of any nature whatsoever, including legal fees and expenses.

1.6 “Consent Decree” shall mean the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.7 “Court” shall mean the United States District Court for the Northern District of California.

1.8 “Court’s Approval Order” shall mean the Court’s Order dated _____, 2018, approving the modifications to the Indian Tribe Trust Agreement in this matter. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. __.

1.9 “Day” shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Indian Tribe Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal or Delaware holiday, the period shall run to the close of business of the next Business Day;

1.10 “Delaware Act” shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.11 “DERA” shall mean the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. §§ 16131-16139).

1.12 “Eligible Mitigation Action” shall mean any of the actions listed in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement.

1.13 “Eligible Mitigation Action Administrative Expenditure” shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

1.14 “EMA Certification Form” shall mean the Beneficiary Eligible Mitigation Action Certification form that is attached as Appendix D-4 to this Indian Tribe Trust Agreement.

1.15 “Federal Agency” shall mean any agency of the United States government.

1.16 “First Partial Consent Decree” shall mean the Partial Consent Decree entered by the Court in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), on October 25, 2016.

1.17 “Force Majeure” shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.18 “Indian Land” shall mean the lands of any Indian Tribe or within Indian country.

1.19 “Indian Tribe” shall mean any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe, as provided in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018), which will be updated from time to time.

1.20 “Indian Tribe Trust Agreement” shall mean the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries approved by the Court on September 19, 2017, *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 49, the modifications thereto as approved by the Court’s Approval Order, and the fully executed version filed with the Court on the Trust Modification Effective Date.

1.21 “Investment Manager” shall mean Wilmington Trust, N.A., acting solely in its role as the professional investment manager of Trust Assets in accordance with subparagraph 3.2.2 of this Indian Tribe Trust Agreement and the Investment Management Agreement entered into on the Trust Effective Date. In subparagraphs 2.2.4, 3.1.2.8, 3.5.3 (last sentence), 3.5.6, and 3.5.7 of the Indian Tribe Trust Agreement, each reference to the Investment Manager shall include the Investment Manager and its officers, directors, and employees.

1.22 “IRS” shall mean the Internal Revenue Service.

1.23 “Second Partial Consent Decree” shall mean the Second Partial Consent Decree entered by the Court in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 3228-1), on May 17, 2017.

1.24 “Shared State and Indian Tribe Administration Costs” shall mean the costs, fees, and expenses of: (1) establishing and maintaining the Trustee’s public-facing website; and (2) establishing and maintaining a secure method of internet-based communication for the Trustee and Beneficiaries.

1.25 “Start-up Costs” shall mean all fees, costs, and expenses incurred in connection with establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust and setting them up for operation. Start-up costs shall not include the cost of premiums for insurance policies.

1.26 “Subject Vehicles” shall mean: (i) the “2.0 Liter Subject Vehicles,” as defined in the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1); and (ii) the “3.0 Liter Subject Vehicles,” as defined in the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.27 “Tax” or “Taxes” shall mean all federal, state, and local taxes that may be imposed on the Trust by any taxing authority.

1.28 “Tax Professionals” shall mean all accountants and tax lawyers hired to assist the Trustee with the Trust’s reporting obligations, tax filings, audits, and all other tax and accounting-related activities, including efforts to obtain and, if granted, maintain the IRS Private Letter Ruling as described in subparagraph 3.1.2.7 and Paragraph 6.7 of this Indian Tribe Trust Agreement.

1.29 “Tax Return” or “Tax Returns” shall mean all required federal, state, and local tax returns and information returns, including any returns associated with compliance with withholding and reporting requirements.

1.30 “Termination Date” shall mean the date that the Indian Tribe Trust terminates pursuant to Paragraph 6.8 of this Indian Tribe Trust Agreement.

1.31 “Trust Administration Costs” shall mean all expenditures of Trust Assets by the Trustee.

1.32 “Trust Effective Date” shall mean October 2, 2017, the date that the United States filed the fully executed final version of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1.33 “Trust Modification Effective Date” shall be _____, 2018, the date that the United States filed the fully executed version of the August 13, 2018 modification of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.).

1.34 “Trustee” shall mean Wilmington Trust, N.A., acting solely in its role as the Trustee of this Indian Tribe Mitigation Trust as appointed in accordance with Paragraph 3.0, or a successor trustee pursuant to subparagraph 3.7.2. In subparagraphs 2.2.4, 3.1.2.8, 3.5.2, 3.5.3, 3.5.6, and 3.5.7 of this Indian Tribe Trust Agreement, each reference to the Trustee shall include the Trustee and its officers, directors, and employees.

1.35 “United States” shall mean the United States of America, acting on behalf of the U.S. Environmental Protection Agency (“EPA”).

II. INDIAN TRIBE MITIGATION TRUST

2.0 Establishment of the Indian Tribe Mitigation Trust

2.0.1 Irrevocable Establishment. The Defendants hereby and irrevocably establish this Indian Tribe Mitigation Trust on behalf of the Beneficiaries in the form of a statutory trust under the Delaware Act, which shall bear the name “Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.” In connection with the Trustee’s power hereunder, the Trustee may use this name or a variation thereof. The Trustee is hereby authorized and directed to execute and file a Certificate of Trust for the Indian Tribe Mitigation Trust in the form attached hereto as Appendix D-5. The Trustee hereby accepts and agrees to hold the assets owned by the Indian Tribe Mitigation Trust (“Trust Assets”) for the benefit of the Beneficiaries and for the purposes described herein and in the Consent Decree.

2.0.2 Trustee. In accordance with Paragraph 3.0 below, on the Trust Effective Date, the Trustee, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee in accordance with the Consent Decree to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Indian Tribe Mitigation Trust to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Indian Tribe Trust Agreement, and to provide funds for the administration and operation of this Indian Tribe Trust in accordance with this Indian Tribe Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

2.0.4 Creation and Use of Indian Tribe Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account (“Indian Tribe Trust Account”), and file with the Court a designation and identification of the Indian Tribe Trust Account. The purpose of the Indian Tribe Trust Account shall be to receive deposits from the Defendants (directly or through the Court Registry) pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, to hold them in trust, to receive income and gains from any investment of Trust Assets (collectively, “Trust Funds”), and to make disbursements to fund Eligible Mitigation Actions by Beneficiaries and to pay Trust Administration Costs, all in accordance with the Consent Decree and this Indian Tribe Trust Agreement. Disbursements shall be directed by each Beneficiary pursuant to a Beneficiary Eligible Mitigation Action Certification form (“EMA Certification Form”) (Appendix D-4) delivered to the Trustee in accordance with Paragraph 5.2. Unless otherwise agreed by the parties to the Consent Decree (“Consent Decree Parties”), the Indian Tribe Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Indian Tribe Trust Account Divisions. The Indian Tribe Trust Account may be divided into such number of discrete trust subaccounts dedicated for specific purposes as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and to implement, the Consent Decree and this Indian Tribe Trust Agreement.

2.1 Funding of the Indian Tribe Mitigation Trust: The Settling Defendants shall fund the Indian Tribe Mitigation Trust as required by the First Partial Consent Decree, and the Defendants shall fund the Indian Tribe Mitigation Trust as required by the Second Partial Consent Decree. The Trustee shall allocate to the Indian Tribe Mitigation Trust the following amounts: (1) 2.01% of the Mitigation Trust Payments from the First Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account, and (2) 2.3% of the Mitigation Trust Payments from the Second Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee’s receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Indian Tribe Trust Account the funds allocated to the Tribal Allocation Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for a technical assistance provider in accordance with subparagraph 2.1.1.1. After lodging the First Partial Consent Decree, the United States consulted with interested Indian

Tribes for a 60-Day period (“Consultation Process”), in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those Indian Tribes that are deemed Beneficiaries hereunder, including setting aside 5% of those funds to be directed towards technical assistance to enable Indian Tribes to prepare funding requests for Eligible Mitigation Actions.

- 2.1.1.1 Technical Assistance Provider. In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference for using an established technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions. Accordingly, the Trustee agrees: (1) to set aside 5% of the Tribal Allocation Subaccount into a separate subaccount, the Technical Assistance Provider Subaccount, for record keeping purposes only, to be disbursed to a technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions; and (2) consistent with comments received from Indian Tribes during the Consultation Process, to select the Institute for Tribal Environmental Professionals as the technical assistance provider for these purposes. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any budget, semiannual report, or other document from the technical assistance provider reasonably believed by the Trustee to be genuine and to have been signed or sent by the proper person or persons.
- 2.1.1.2 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form (“Beneficiary Status Certification Form”) (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider’s review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. The technical assistance provider’s report relating to its review of the EMA Certification Forms (Appendix D-4) shall be delivered to the Trustee five Business Days before the Trustee’s deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in subparagraph

5.2.16. If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

2.1.1.3 Budget. In order to fund its services, the technical assistance provider shall submit to the Trustee, in electronic and hard-copy formats, an annual budget for its services in each year. The annual budget shall be submitted 45 Days before the commencement of the applicable budget period for review by the Trustee, and shall include: (i) a detailed description of the proposed services described above in subparagraph 2.1.1.2; (ii) a proposed management plan for the proposed services, including a detailed budget for proposed expenses for the upcoming year, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.4; (iv) a certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable; (v) for each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors; (vi) a detailed description of how the technical services provider will oversee the proposed services, including, but not limited to: identification of the specific entity responsible for reviewing and auditing expenditures of funds to ensure compliance with applicable law, and a commitment by the technical assistance provider to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the technical assistance provider shall make such documentation publicly available; and (vii) a detailed plan for reporting on implementation that meets the requirements of subparagraph 2.1.1.5. The technical assistance provider shall provide additional information as requested by the Trustee. The Trustee shall post each proposed annual budget on the Indian Tribe Trust's public-facing website upon receipt. The Trustee must approve the annual budget for the technical assistance provider's services before disbursing funds for the budget. Pursuant to the procedures and schedules in subparagraphs 5.2.16 and 5.2.16.1, the Trustee shall approve any funding request in the technical assistance provider's budget that meets the requirements of this subparagraph 2.1.1.3, and shall disburse funds according to the written instructions provided by the technical assistance provider. In connection with a modification of this Indian Tribe Trust Agreement, the technical assistance provider may revise its initial budget to take into account factors including the scope of tasks listed in subparagraph 2.1.1.2 and the reduction in the number of funding cycles in subparagraph 5.0.5.2.

2.1.1.4 Limits on Indirect Costs. The technical assistance provider's indirect costs associated with administering the technical assistance portion of the Tribal Allocation Subaccount shall not exceed 30.9% of the overall costs in providing technical assistance under subparagraph 2.1.1.1 (i.e., of the 5% portion that will be used for technical assistance, no more than 30.9% of the 5% portion may consist of indirect costs). For purposes of this subparagraph, "indirect costs" are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. As required by subparagraph 2.1.1.3, the technical assistance provider shall separately set forth the indirect costs in each annual budget submitted to the Trustee. These indirect costs are subject to the limitations in the Federal Acquisition Regulations at 48 C.F.R. § 31.205.

2.1.1.5 Reporting Obligations. No later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, the technical assistance provider shall provide a semiannual report to the Trustee describing the progress implementing the technical assistance services during the six-month period leading up to the reporting date (including a summary of all costs expended on the services through the reporting date). Such reports shall include a complete description of the status, development, and implementation of the services. These reports shall be signed by an official with the authority to submit the report for the technical assistance provider and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

2.1.1.6 Unused Funds. Upon the termination or completion of services by the technical assistance provider, any unused funds shall be returned by the technical assistance provider to the Indian Tribe Trust and added back to the Tribal Allocation Subaccount. Not later than December 31, 2022, any unused funds held by the technical assistance provider shall be returned to the Indian Tribe Trust.

2.1.2 Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests.

2.1.2.1 Establishment of Beneficiary Status. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court a Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Beneficiary Status Certification Form with the Court, each Indian Tribe shall also concurrently provide a copy of the Beneficiary Status Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1.

2.1.2.2 Designated Beneficiary's Participation Notice. Beginning with the second funding cycle, after an Indian Tribe has been designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1, that Indian Tribe Beneficiary may participate in the second and any subsequent funding cycle by submitting to the Trustee, pursuant to subparagraphs 5.0.5.3.3 and 5.0.5.3.5, a Designated Beneficiary's Participation Notice (Appendix D-6) by the deadline established for each funding cycle in which it would like to participate.

2.1.2.3 Funding Requests. In any request for Eligible Mitigation Action funding submitted to the Trustee by any Beneficiary, the Beneficiary shall timely submit an EMA Certification Form (Appendix D-4) for each funding cycle, and shall comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Each allocation provided to any Indian Tribe that is designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1 shall be subject to Paragraph 5.3 and subparagraphs 5.0.5, 5.2.17, and 5.4.5.

2.1.3 Intentionally Reserved.

2.1.3.1 Intentionally Reserved.

2.1.3.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall establish a Tribal Administration Cost Subaccount that shall be funded in accordance with the specific allocation for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). The funds in this subaccount shall be used exclusively to pay for the Indian Tribe Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee, consistent with the weighted average allocation percentage of 2% set forth in Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), may also draw upon this account to pay 2% of the Start-up Costs and 2% of the Shared State and Indian Tribe Administration Costs, in accordance with Paragraph 3.6. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Trust Administration Costs relating to the Tribal Administration Cost Subaccount, other than investment earnings on the Tribal Administration Cost Subaccount, absent further order of the Court. If additional funds are required to fund this Tribal Administration Cost Subaccount, the Trustee shall confer with the United States to attempt to find an appropriate resolution to address any funding shortfall.

2.1.4 Tribal Advisory Council. In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and

fund a Tribal Advisory Council. The Tribal Advisory Council shall: (i) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and (ii) provide a forum for Indian Tribes to raise general questions relating to the Indian Tribe Trust Agreement. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members. The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider's summary report may be submitted to the Trustee as a part of its regular semi-annual report to the Trustee pursuant to subparagraph 2.1.1.5. The Trustee shall set aside \$30,000 of the Tribal Administrative Cost Subaccount into a separate subaccount, the Tribal Advisory Council Subaccount, for record keeping purposes only, to fund a Tribal Advisory Council for the purposes listed in this subparagraph. The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.3, 2.1.1.4, and 2.1.1.5 with respect to funding requests and reporting obligations for the Tribal Advisory Council. The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle. Upon the termination or completion of services by the Tribal Advisory Council, any unused funds shall be returned by the Institute for Tribal Environmental Professionals to the Indian Tribe Trust and added back to the Tribal Administration Cost Subaccount.

2.1.5 Tax Payment Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall deduct an amount equal to the estimated taxes owed on earnings of the Trust Funds while on deposit in the Court Registry that have been allocated to the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1. The amount of the deduction shall be based on applicable income tax withholding and reporting requirements, and consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. Such amount shall be deposited into a dedicated, non-interest bearing account ("Tax Payment Subaccount"). In addition, prior to the allocation of any investment income pursuant to subparagraph 3.2.3, the Trustee shall deduct an amount equal to the estimated taxes owed on such earnings and deposit that sum into the Tax Payment Subaccount. The amounts in this Tax Payment Subaccount shall be used for the express purpose of paying all applicable taxes with respect to the Indian Tribe Mitigation Trust in a manner consistent with Paragraph 6.7. If at any time the funds on deposit in this Tax Payment Subaccount are insufficient to pay all Taxes then due and owing, the Trustee shall seek to resolve any dispute pursuant to the dispute resolution procedures of Paragraph 6.2.

2.2 Trust Limitations

2.2.1 No Consent Decree Party or Beneficiary, nor any of its components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Indian Tribe Mitigation Trust.

2.2.2 All Trust Assets shall be used solely for the purposes provided in the Consent Decree and this Indian Tribe Trust Agreement.

2.2.3 This Indian Tribe Mitigation Trust is irrevocable. The Defendants: (i) shall not retain any ownership or residual interest whatsoever with respect to any Trust Assets, including, but not limited to, the funds transferred by the Defendants to fund the Indian Tribe Trust pursuant to the terms of the Consent Decree, (ii) shall not have any liabilities or funding obligations with respect to the Indian Tribe Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree, and (iii) shall not have any liability or obligation to pay tax on any income or gains from any investments of Trust Assets. Nor shall the Defendants have any rights or role with respect to the management or operation of the Indian Tribe Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.4 Exculpation. Neither the Trustee and its officers, directors, and employees, the Investment Manager and its officers, directors, and employees, the Tax Professionals nor the Indian Tribe Mitigation Trust shall have any liability whatsoever to any person or party for any liability of the Defendants; provided, however, that the Indian Tribe Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Indian Tribe Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: Pursuant to Paragraph 15.e. of the First Partial Consent Decree, the Court appointed Wilmington Trust, N.A., as Trustee of the Environmental Mitigation Trust. Dkt. No. 3030 at 2. Wilmington Trust, N.A., not individually but in its representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such capacity to the Indian Tribe Mitigation Trust and for the benefit of the Beneficiaries.

3.0.1 Wilmington Trust, N.A. is acting in two separate and distinct roles under the Indian Tribe Mitigation Trust: (1) as the Trustee of the Indian Tribe Mitigation Trust; and (2) as the Investment Manager of the Trust Assets. These roles are subject to different standards of care. Wilmington Trust, N.A., acting as Trustee, is subject to the standard of care set forth in subparagraphs 3.1.1 and 3.5.2. In its role as Investment Manager, Wilmington Trust, N.A. is subject to the standard of care set forth in subparagraph 3.2.2.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this Indian Tribe Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Indian Tribe Mitigation Trust, which shall be exercised in an efficient and expeditious manner in furtherance of and in a manner consistent with the purposes of this Indian Tribe Trust Agreement and the Consent Decree. Subject to the limitations on liability set forth in subparagraph 3.5.2, the Trustee shall act in accordance with the current professional standards of care and with the diligence, skill, and care expected for the administration of such a Trust. The Trustee shall have only such duties, rights, powers, and privileges

expressly set forth in the Consent Decree, this Indian Tribe Trust Agreement, and as otherwise provided by the Delaware Act. No implied duties (including fiduciary duties) shall be read into this Indian Tribe Trust against Wilmington Trust, N.A., acting as the Trustee.

3.1.2 Upon the Trust Effective Date, the powers of the Trustee shall include the following:

3.1.2.1 To receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of this Indian Tribe Trust Agreement or to engage a professional investment manager (“Investment Manager”) to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 for the benefit of the Beneficiaries. The Trustee appoints Wilmington Trust, N.A. as the Investment Manager for the Indian Tribe Mitigation Trust pursuant to an Investment Management Agreement entered into on the Trust Effective Date to manage the Trust Assets in accordance with Paragraph 3.2;

3.1.2.2 To establish and maintain a public-facing website onto which it will post all materials as required hereunder;

3.1.2.3 To establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries. Initially, the Trustee will use Intralinks to provide this method of communication. The Trust may change this method at any time but shall provide 30 Days’ notice to the Beneficiaries in connection with any change;

3.1.2.4 To hold title to property in the name of the Trustee in its capacity as such;

3.1.2.5 To incur, and pay from the Tribal Administration Cost Subaccount, any and all customary and commercially reasonable charges and expenses upon or connected with the administration of this Indian Tribe Mitigation Trust in the discharge of its obligations hereunder, including 2% of Start-up Costs, 2% of Shared State and Indian Tribe Administration Costs, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement;

3.1.2.6 To engage and compensate professionals to assist the Trustee in accordance with this Indian Tribe Trust Agreement, including, but not limited to, legal, environmental, investment, accounting, tax, website, and third-party auditing professionals, or internet service providers, or insurance providers. Such third-party auditing professionals may be used by the Trustee to audit and/or review expenditures to verify that they comport with the requirements and limitations on use of Trust Funds, as set forth herein. The Trustee may initiate such an audit and/or review on its own initiative or in response to credible reports or suggestions that such review or audit is appropriate. The Trustee shall have an annual independent audit of the Trust’s annual financial

statements prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual independent audit of the Trust's annual financial statements and the requirement of a semi-annual independent review of the Trust's financial statement for any semi-annual period, starting in year seven or at an earlier time in order to preserve Trust Funds;

- 3.1.2.7 To engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust, and to take such actions as may be reasonably necessary to secure such ruling and to ensure that the Indian Tribe Mitigation Trust continues to comply with such ruling upon the advice of the Tax Professionals. The Trustee may engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS that investment income earned on the Trust Assets will be excludible from gross income upon the advice of Tax Professionals that the pursuit of such a Private Letter Ruling is prudent;
- 3.1.2.8 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Indian Tribe Mitigation Trust, the Trust Assets, the Trustee and its officers, directors, and employees, Wilmington Trust, N.A., in its role as Investment Manager, and its officers, directors, and employees, and to cover Tax Professionals, if required, from any and all Claims that might be asserted against each;
- 3.1.2.9 To distribute Trust Assets for the purposes contemplated in this Indian Tribe Trust Agreement and the Consent Decree, including the allocation of funds to Beneficiaries for approved Eligible Mitigation Actions;
- 3.1.2.10 To file documents in Court on behalf of itself and the Indian Tribe Trust;
- 3.1.2.11 To make all necessary state and federal filings and to provide information as required by law;
- 3.1.2.12 To vote shares or other investments;
- 3.1.2.13 To open or maintain any additional bank accounts, or close bank accounts or open securities accounts as are necessary or appropriate to manage the Trust Assets;
- 3.1.2.14 To apply, as soon as practicable after the Trust Effective Date, for an employer identification number for the Indian Tribe Trust pursuant to IRS

Form SS-4, and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4);

- 3.1.2.15 To deduct and withhold from allocation of investment earnings to the Beneficiaries under subparagraph 3.2.3 all Taxes that the Trustee may be required to deduct and withhold under any provision of tax law, and any allocation of investment income under subparagraph 3.2.3 to an Indian Tribe Trust subaccount shall be reduced to the extent such withheld amounts are remitted to the appropriate taxing authority;
- 3.1.2.16 To file on behalf of the Indian Tribe Trust all required Tax Returns, which shall be completed in consultation with Tax Professionals, ensure compliance with withholding and reporting requirements, and pay any and all Taxes, including estimated Taxes, due and owing with respect to the Indian Tribe Trust from amounts in the Tax Payment Subaccount pursuant to subparagraph 2.1.5; and
- 3.1.2.17 Subject to applicable requirements of this Indian Tribe Trust Agreement (including the limitations on liability set forth in subparagraph 3.5.2), the Consent Decree, and other applicable law, to effect all actions and execute and deliver all contracts, instruments, agreements, or other documents that may be necessary to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree, each in accordance with its duties and the current professional standards of care, and with the diligence, skill, and care expected for the administration of such a Trust for the benefit of the Indian Tribes.
- 3.1.2.18 Duty to Comply with Law. The Trustee shall not be required to take any action that would violate a law or regulation to which it is subject.
- 3.1.2.19 Relation-Back Election. If applicable, the Trustee and the Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the Indian Tribe Trust as coming into existence as a settlement fund as of the earliest possible date.

3.2 Investment of Trust Assets: The Trustee shall engage the Investment Manager to invest and reinvest the principal and income of the Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs.

3.2.1 Any investment income that is not reinvested shall be deposited into the Indian Tribe Trust Account for allocation among the Beneficiaries.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee or Investment Manager must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then

prevailing that a prudent investor, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with like aims. The Investment Manager shall comply with all applicable laws and shall be held to a fiduciary standard of care with respect to the investment and reinvestment of the principal and income of Trust Assets; except that the right and power of the Investment Manager to invest and reinvest the Trust Assets shall be limited to: (i) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (ii) U.S. Treasury bills, bonds, and notes, including, but not limited to, long-term U.S. Treasury bills, bonds, and notes; (iii) repurchase agreements for U.S. Treasury bills, bonds, and notes; (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or (v) open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection. The Investment Manager shall maintain prudent diversification across instruments and specific issuers. The value of bonds of any single company and its affiliates owned by the Indian Tribe Trust directly rather than through a mutual fund shall not exceed 10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies. Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments made by the Investment Manager shall be made on the date of acquisition of any such investment or on the date of re-investment. The Investment Manager shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Investment Manager determines that any particular investment no longer meets the rating requirement, the Investment Manager shall substitute that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Investment Manager believes it is in the interest of the Indian Tribe Trust to do so. The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. This subparagraph 3.2.2 shall act as a standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash, which shall be invested in The Blackrock Fed Fund (CUSIP 09248U809). Except for actions or omissions of the Investment Manager that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, the Investment Manager and its officers, directors, or employees shall have no liability for any and all Claims.

3.2.3 Allocation of Investment Income. Any and all earnings, interest, and other investment income realized on the investment of the Trust Assets shall be allocated to each Indian Tribe Trust subaccount on the basis of the respective subaccount balances at the end of each month. Any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount shall be allocated to that administration subaccount on the basis of the administration subaccount balance at the end of each month.

3.2.4 Nothing in this Section shall be construed as authorizing the Trustee to cause the Indian Tribe Mitigation Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Assets or any

portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Indian Tribe Mitigation Trust.

3.3 Accounting: The Trustee shall maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against the Indian Tribe Mitigation Trust. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles (“GAAP”). The United States, by and through EPA, and each Beneficiary, shall have the right upon 14 Days’ prior written notice to inspect such books and records, as well as all supporting documentation. Except as otherwise provided herein, the Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Indian Tribe Mitigation Trust, or as a condition for making any payment, allocation or distribution out of the Trust Assets.

3.3.1 Semiannual Reporting. Within 180 Days of the Trust Effective Date in the first year, and thereafter by February 15 (for the preceding six-month period of July 1 to December 31) and August 15 (for the preceding six-month period of January 1 to June 30) of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to Paragraph 6.8 hereof (each a “Financial Reporting Date”), the Trustee shall file with the Court and provide each known Beneficiary, the technical assistance provider, and the Defendants with:

- 3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Indian Tribe Trust (including applicable ratings on such investments); and (iii) including a cumulative and calendar year accounting of the amount the Trustee has paid out from the Indian Tribe Trust Account and all subaccounts to any recipient;
- 3.3.1.2 Regarding the Tribal Allocation Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) the initial allocation of Trust Assets in the Tribal Allocation Subaccount; (ii) any allocation adjustments pursuant to this Indian Tribe Trust Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) the remaining and projected amount in the Tribal Allocation Subaccount. Such accounting shall also include, for each Beneficiary, a balance statement and projected annual budget of disbursements taking into account those Eligible Mitigation Actions that have been approved as of the Financial Reporting Date;
- 3.3.1.3 Regarding the Tribal Administration Cost Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; and (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs;
- 3.3.1.4 For the Indian Tribe Trust Account and all subaccounts, including, but not limited to the Tribal Administration Cost Subaccount, balance

statements and one-year projected annual budgets that itemize all assets, income, earnings, expenditures, allocations, and disbursements of Trust Assets by Indian Tribe Trust Account and each subaccount;

3.3.1.5 (1) financial statements for the semi-annual period ending June 30 of each year, accompanied by a review report thereon from an independent certified public accounting firm; (2) financial statements for the annual period ending December 31 of each year, accompanied by an audit opinion thereon from an independent certified public accounting firm; (3) all semi-annual and annual period's financial statements shall include disclosure of the disposition of Trust Assets from the previous year end date through the calendar quarter immediately preceding the Financial Reporting Date, and a supplemental schedule presenting a reconciliation of the Trustee's prior budget projections for Trust Administration Costs to actual performance for that period; and (4) the independent certified public accounting firm shall perform its review of the semi-annual financial statements and its audit of the annual financial statements in accordance with auditing standards generally accepted in the United States (i.e., audit standards issued by the Association of International Certified Professional Accountants ("AICPA")).

3.3.1.6 A description of any previously unreported action taken by the Indian Tribe Trust in performance of its duties which, as determined by the Trustee, counsel, accountants, or other professionals retained by the Trustee, affects the Indian Tribe Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Indian Tribe Trust Agreement and the Consent Decree during the previous year; and

3.3.1.8 On each Financial Reporting Date, the Trustee shall simultaneously publish on the Indian Tribe Trust's public-facing website all information required to be provided under Paragraph 3.3.

3.3.2 After the Termination Date, the Trustee intends to destroy all records retained pursuant to this Indian Tribe Trust Agreement. The Trustee shall notify the United States and the Defendants at least 90 Days prior to the destruction of the records. Upon request by the United States or the Defendants, the Trustee shall deliver any such records to EPA or the Defendants, respectively.

3.4 Limitation of the Trustee's Authority: The Trustee is not authorized to engage in any trade or business with respect to the Trust Assets or proceeds therefrom. This provision does not prevent Wilmington Trust, N.A. from acting as the Investment Manager.

3.5 Conditions of Trustee's Obligations: The Trustee accepts appointment as the Trustee subject to the following express terms and conditions:

3.5.1 No Bond. Notwithstanding any state or tribal law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

3.5.2 Limitation of Liability and Standard of Care for the Trustee. In no event shall the Trustee be held personally liable for any and all Claims asserted against the Trustee and/or the Indian Tribe Mitigation Trust except for actions or omissions of the Trustee that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Trustee. The Trustee shall not be held personally liable for carrying out the express terms of this Indian Tribe Mitigation Trust or carrying out any directions from the Beneficiaries or the United States issued in accordance with this Indian Tribe Trust Agreement or in accordance with any Court Order entered in connection with or arising out of the Indian Tribe Mitigation Trust. The Trustee shall not be held personally liable for any failure or delay in the performance of its obligations hereunder arising from causes beyond the control of the Trustee (“Force Majeure”). The Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a final, non-appealable judgment of the Court determining fraud, negligence, or willful misconduct on the part of the Trustee in following such advice. The Trustee shall not be held liable for the negligence, fraud, or willful misconduct of any professional hired by it hereunder provided that the Trustee appointed and engaged the professional with due care. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a final, non-appealable judgment of the Court, the Trustee shall not be personally liable to persons seeking payment from or asserting any and all Claims against the Indian Tribe Mitigation Trust or the Trustee. The Trustee, which is a trustee of this Indian Tribe Trust that has been established under the Delaware Act, shall only be held to the standards of care set forth in this subparagraph 3.5.2; the standards of common law trust laws or the personal trust laws of any state shall not apply in any circumstances hereunder.

3.5.2.1 Limitation of Liability for Tax Professionals. In no event shall the Tax Professionals engaged by the Trustee to assist it with the administration of the Indian Tribe Mitigation Trust be held personally liable for any and all Claims asserted against them except for actions or omissions of the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Tax Professionals.

3.5.3 Indemnification. Except for actions or omissions of the Trustee, the Investment Manager, and the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee, the Investment Manager, or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification from the Trust Assets, solely as provided in this subparagraph 3.5.3, to hold them harmless against any and all Claims brought against any of them arising out of or in connection with the acceptance or administration of their duties under this Indian Tribe Mitigation Trust, including any and all Claims in connection with enforcing their rights hereunder and defending themselves against any and all Claims. In asserting any indemnification claim against Trust Assets pursuant to this subparagraph 3.5.3, the Trustee, the Investment Manager, and the Tax Professionals shall first seek to recover the amount by asserting a claim against the Trustee’s insurance policies purchased pursuant to

subparagraph 3.1.2.8 to protect the Trustee, the Investment Manager, and the Tax Professionals hired hereunder against any and all Claims. With respect to any and all amounts that: (1) are not fully and timely paid to the Trustee, the Investment Manager, or the Tax Professionals pursuant to the insurance policies purchased pursuant to subparagraph 3.1.2.8, and (2) are not determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee or the Investment Manager or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification solely from the portion of Trust Assets in (a) the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and (b) the investment earnings on the Tribal Administration Cost Subaccount. Indemnification under this subparagraph 3.5.3 covers only the amounts not fully and timely paid or covered by insurance policies purchased pursuant to subparagraph 3.1.2.8. The Trustee, the Investment Manager, and the Tax Professionals shall reimburse the Indian Tribe Mitigation Trust for any amount advanced to them or paid from the Tribal Administration Cost Subaccount for any Claim if any proceeds are paid on such Claim from insurance policies purchased pursuant to subparagraph 3.1.2.8. If insurance payments are denied in whole or part, the Trustee shall confer with legal counsel and consider whether to affirmatively pursue such insurance payments including, without limitation, an insurance coverage suit arising out of a wrongful denial of coverage. For the avoidance of doubt, subparagraphs 3.5.2, 3.5.2.1, and 3.5.3 do not create for the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, and the Tax Professionals hired hereunder any express or implied right to indemnification from any Consent Decree Party for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or the Tax Professionals, and no Consent Decree Party shall be liable for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or Tax Professionals.

3.5.4 Reliance on Documentation. The Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries, including the Beneficiary Status Certification Form (Appendix D-3) the EMA Certification Form (Appendix D-4), the Designated Beneficiary's Participation Notice (Appendix D-6), and the Beneficiary's Election to Opt Out Form (Appendix D-7). The Trustee shall have no duty to monitor or supervise the use of Trust Funds paid in accordance with Beneficiary Eligible Mitigation Action Certification and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the technical assistance provider, including, without limitation, the technical assistance provider's report relating to EMA Certification Forms (Appendix D-4) that it has reviewed in each funding cycle pursuant to subparagraph 2.1.1.2, its annual budget pursuant to subparagraph 2.1.1.3, and its report relating to its services and expenditures pursuant to subparagraph 2.1.1.5.

3.5.5 Right to Demand Documentation. Notwithstanding anything else in this Indian Tribe Trust Agreement, in the administration of the Trust Assets, the Trustee shall have the right, but shall not be required, to demand from the relevant Beneficiary or the

technical assistance provider before the disbursement of any cash or in respect of any action whatsoever within the purview of this Indian Tribe Mitigation Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

3.5.6 Limitation on Consequential Damages. Unless the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have engaged in fraudulent or willful misconduct, the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall not have any right to recover, and the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals shall not be liable for, any special, indirect, punitive, or consequential loss or damages, of any kind whatsoever, against the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals. When the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have been negligent, any and all Claims by the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall be limited to direct damages.

3.5.7 No Consequential Damages. In no event shall the Trustee, the Investment Manager, the Tax Professionals, or the Indian Tribe Mitigation Trust be held responsible or liable for special, indirect, punitive, or consequential loss or damages of any kind whatsoever in connection with any and all Claims brought against them by any third party.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in Appendix D-1 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the administration of the Indian Tribe Trust, including payment of professionals hired in connection with the duties and responsibilities of the Indian Tribe Trust, payment of insurance premiums for policies purchased pursuant to subparagraph 3.1.2.8, payment of a deductible incurred under an insurance policy for the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals hired hereunder purchased pursuant to subparagraph 3.1.2.8 in cases in which the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals would be entitled to indemnification under subparagraph 3.5.3, any indemnification amounts as provided in accordance with subparagraph 3.5.3, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Indian Tribe Mitigation Trust, in accordance with the projected annual budgets for administration of the Indian Tribe Mitigation Trust required under subparagraph 3.3.1 hereof, and shall be entitled to pay itself from the Tribal Administration Cost Subaccount its initial fee and its annual administration fee as set forth in its fee letter dated as of the Trust Effective Date (“Trustee Fee Letter”). The Trustee shall provide a copy of the Trustee Fee Letter to each Beneficiary via the secure internet site established by the Trustee pursuant to subparagraph 3.1.2.3. Consistent with the weighted average allocation rates set forth in Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount 2% of Start-up Costs and 2% of Shared State and Indian Tribe Administration Costs. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the specific

allocation established for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), plus any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount. The Trustee shall not use the Tribal Administration Cost Subaccount to pay: (1) the fees and expenses of the Investment Manager; or (2) any and all Taxes due and owing with respect to the Indian Tribe Trust. In accordance with the terms of the Investment Management Agreement, the Investment Manager's fees and expenses shall be deducted directly from the investment earnings on the Trust Assets, and not from the corpus of the Trust Assets. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established in subparagraph 2.1.5. The Trustee shall include in its semiannual reporting, and post on its public-facing website, all Trust Administration Costs (including the costs and descriptions of the Trustee's services rendered on behalf of the Indian Tribe Trust) at least 15 Days prior to the payment of any such expense; provided, however, that the requirement to post all Trust Administrative Costs at least 15 Days prior to payment shall first take effect when the website is established and ready for use, and shall not initially apply to Start-up Costs and to Shared State and Indian Tribe Administration Costs. In addition, any and all payments relating to Taxes are not subject to the 15-Day posting requirement on the public-facing website. After the Tribal Administration Cost Subaccount is funded pursuant to subparagraph 2.1.3.2, the Trustee, after receipt of invoices from any third-party service providers, shall pay as promptly as practical any and all fees, costs, and expenses incurred by the Trustee to establish the Indian Tribe Mitigation Trust including, but not limited to: (1) the invoices of third-party service providers (e.g., legal, accounting, website developer, and hosting provider); (2) fees, costs, and expenses necessary to commence the operations of the Indian Tribe Trust (e.g., Intralinks, Pacer, and insurance premiums); and (3) the Trustee's acceptance fee and first quarter portion of the Trustee's annual fee for the first year. All Trust Administration Costs that are paid prior to the establishment of the website shall be posted on the website as promptly as practicable after the website is established. Such information shall remain available on the website until the Termination Date.

3.7 Termination, Resignation, and Removal of the Trustee

3.7.1 Termination of Trustee. The rights, powers, duties, and obligations of the Trustee to the Indian Tribe Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. The Trustee may commence the resignation process at any time by providing 90 Days' notice to the United States, the Defendants, and the Beneficiaries. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the First Partial Consent Decree; and (ii) order of the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the appointment of a successor trustee or as otherwise ordered by the Court, the Trustee shall transfer all Indian Tribe Trust records to the successor trustee, and shall take all actions necessary to assign, transfer, and pay over to the successor trustee control of all Trust Assets (including the public website maintained by the Trustee). In the event that the Trustee ceases to exist or ceases to operate its corporate trust business, the Court may, upon motion by the United States or any Beneficiary, appoint an interim Trustee until such time as a successor trustee is appointed in accordance with the procedures set forth in the First Partial Consent Decree. Any successor

Trustee appointed hereunder shall file an amendment to the Certificate of Trust as required by the Delaware Act.

IV. INDIAN TRIBE MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each Indian Tribe may elect to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. For the first funding cycle, an Indian Tribe was required to file its Beneficiary Status Certification Form (Appendix D-3) at the time it filed its first funding request, including any request seeking DERA funds, which was due 90 Days after the Trust Effective Date. In order to qualify as a designated Beneficiary for funding cycles after the first funding cycle, any Indian Tribe, which has not yet been designated as a Beneficiary by the Trustee, shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court by the following deadlines: for the second funding cycle -- by December 3, 2018; for the third funding cycle -- by December 3, 2019; for the fourth and any subsequent funding cycle -- by December 3, 2020. At the time of filing the Beneficiary Status Certification Form (Appendix D-3) with the Court, each Indian Tribe shall also, by the same deadlines, concurrently deliver a copy of the Beneficiary Status Certification Form (Appendix D-3) to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Each Indian Tribe that timely files such certifications shall be a “Certifying Entity.” The Trustee shall be responsible for ensuring that the form of each certification complies with the requirements hereof prior to deeming any Certifying Entity to be a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1.

4.0.1 Notice of Objection. If the United States determines that a Beneficiary Status Certification Form (Appendix D-3) filed by any Certifying Entity fails to comply with the requirements of this Section, the United States may file with the Court a notice of objection within 30 Days after the deadline for each funding cycle set in Paragraph 4.0 for a Certifying Entity to file its Beneficiary Status Certification Form (Appendix D-3) with the Court. Such notice shall explain the basis of objection with specificity. Any such objections shall be resolved according to the procedures set forth in Paragraph 6.2.

4.0.2 Notice of Beneficiary Designation. Regarding the determination of Beneficiary status for Indian Tribes pursuant to subparagraphs 5.0.5 and 5.0.5.1, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity a Notice of Beneficiary Designation according to the following schedule: for the first funding cycle -- not later than 120 Days after the Trust Effective Date; for the second funding cycle -- by February 4, 2019; for the third funding cycle -- by February 3, 2020; for the fourth funding cycle and any subsequent funding cycle -- by February 3, 2021. The Trustee’s Notice of Beneficiary Designation shall indicate:

4.0.2.1 Which Certifying Entities filed certifications as to which no notice of objection has been filed. Upon the filing of this Notice of Beneficiary Designation, each such Certifying Entity shall be deemed a “Beneficiary” hereunder; and

4.0.2.2 Intentionally Reserved.

4.0.2.3 Which Certifying Entities timely filed certifications as to which a notice of objection has been filed pursuant to subparagraph 4.0.1, together with an explanation of the status of any such objection. Each such Certifying Entity shall be a “Pending Beneficiary.” Upon final resolution of each objection, the Pending Beneficiary shall either be deemed a Beneficiary or not qualified as a Beneficiary under this Indian Tribe Trust Agreement.

4.0.2.4 Once a Certifying Entity has been deemed a Beneficiary hereunder, it remains a Beneficiary for all future funding cycles, and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary’s Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

4.1 Intentionally Reserved.

4.2 Required Certifications in Appendix D-3 Form

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Beneficiary Status Certification Form (Appendix D-3) must include a designation of lead agency, certified by the Office of the Governor (or the analogous chief executive) of the Indian Tribe on whose behalf the Beneficiary Status Certification Form is submitted, indicating which agency, department, office, or division will have the delegated authority to act on behalf of and legally bind such Indian Tribe. The Beneficiary Status Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Beneficiary Status Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this Indian Tribe Trust Agreement, including the allocations of Trust Assets provided hereunder, and to be subject to the jurisdiction of the Court for all matters concerning the interpretation or performance of, or any disputes arising under, this Indian Tribe Trust Agreement. The Certifying Entity’s agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

4.2.2 Consent to Trustee Authority. Each Beneficiary Status Certification Form (Appendix D-3) must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Indian Tribe Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds hereunder; and (ii) to implement this Indian Tribe Trust Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Beneficiary Status Certification Form (Appendix D-3) must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; and (ii) prior to requesting any funds hereunder, the Certifying Entity has obtained full legal authority to receive and/or direct payments of such funds. If the Certifying Entity fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary pursuant to subparagraphs 4.0.2.1 and 5.0.5.1 until it has obtained such legal authority.

4.2.4 Certification of Legal Compliance. Each Beneficiary Status Certification Form (Appendix D-3) must include a certification and agreement that, in connection with all actions related to this Indian Tribe Trust, the Certifying Entity has followed and will follow all applicable law and that such Certifying Entity will assume full responsibility for its decisions in that regard.

4.2.5 Certification of Eligible Mitigation Action Accounts. Each Beneficiary Status Certification Form (Appendix D-3) shall include a certification by the Certifying Entity that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trustee for credit to the Tribal Allocation Subaccount.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Beneficiary Status Certification Form (Appendix D-3) shall include an express waiver by the Certifying Entity, on behalf of itself and all of its agencies, departments, offices, and divisions, in favor of the parties to the Consent Decree (including the Defendants) of all claims for injunctive relief to redress environmental injury caused by the Subject Vehicles, whether based on the environmental or common law within its jurisdiction. Such waiver shall be binding on all agencies, departments, offices, and divisions of such Beneficiary asserting, purporting to assert, or capable of asserting such claims. The waiver need not waive, and the Certifying Entities may expressly reserve, their rights, if any, to seek fines or penalties. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

4.2.7 Publicly Available Information. Each Beneficiary Status Certification Form (Appendix D-3) must include a certification by the Certifying Entity that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Certifying Entity, each until the Termination Date, unless the laws of the Certifying Entity require a longer record retention period. This certification shall include an explanation of the procedures by which the records may be accessed. These procedures shall be designed to support access and limit the burden for the general public. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

4.2.8 Notice of Availability of Mitigation Action Funds. Each Beneficiary Status Certification Form (Appendix D-3) must certify that, not later than 30 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, the Certifying Entity will provide a copy of this Indian Tribe Trust Agreement with Appendices to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal Agency that has custody, control, or management of land within or contiguous to the territorial boundaries of the Certifying Entity and has by then notified the Certifying Entity of its interest hereunder, explaining that the Certifying Entity may request Eligible Mitigation Action funds for use on lands within that Federal Agency's custody, control, or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Certifying Entity will review, consider, and make a written determination upon each such request. For the U.S. Department of the Interior and

the U.S. Department of Agriculture, Beneficiaries may provide notice as required by this subparagraph to the following:

Department of the Interior:

National Park Service, Air Resources Division
VW Settlement
P.O. Box 25287
Denver, CO 80225-0287
Or via email to: vwsettlement@nps.gov.

Tim Allen or other designated representative
U.S Fish and Wildlife Service
National Wildlife Refuge System
Branch of Air Quality
Re: VW Settlement
7333 W. Jefferson Ave., Suite 375
Lakewood, CO 80235-2017
Or via email to: VW_Settlement@fws.gov

Department of Agriculture:

Linda Geiser or other designated representative
National Air Program Manager
lgeiser@fs.fed.us
(202) 756-0068

Bret Anderson or other designated representative
National Air Modeling Coordinator
baanderson02@fs.fed.us
(970) 295-5981

4.2.9 Registration of Subject Vehicles. Each Beneficiary Status Certification Form (Appendix D-3) must state, for the benefit of the parties to the Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that the Certifying Entity:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or Emissions Compliant Recall based solely on:

- i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
- ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the First Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
- iii. Other emissions-related vehicle characteristics that result from the modification; or
- iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Certifying Entity by the Defendants.

(d) Notwithstanding the foregoing, a Certifying Entity may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Certifying Entity's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act, 42 U.S.C. §§ 7543, 7507, and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. ALLOCATION OF INDIAN TRIBE MITIGATION TRUST ASSETS

5.0 Intentionally Reserved.

5.0.1 Intentionally Reserved.

5.0.2 Intentionally Reserved.

5.0.3 Allocation of Appendix A Mitigation Trust Payments. Any "National Mitigation Trust Payment" made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) of the First Partial Consent Decree or Section X (Recall Rate) of Appendix A (Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant Recall Program) of the Second Partial Consent Decree shall be allocated in accordance with Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.4 Allocation of Appendix B Mitigation Trust Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) of the First Partial Consent Decree or Appendix B (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject Vehicles) of the Second Partial Consent Decree or any Consent Decree provisions related thereto shall be allocated in accordance with Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.5 Allocation of Tribal Allocation Subaccount.

5.0.5.1 Trustee's Notices. The Trustee shall post a notice on the Indian Tribe Mitigation Trust's public-facing website according to the following schedule:

(a) First Funding Cycle. Within 30 Days after the Trust Effective Date, the Trustee was required to post notice: (i) that each Indian Tribe may seek to become a Beneficiary hereunder by filing with the Court, at the time it submits its first funding request, a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2; (ii) that each Indian Tribe may submit to the Trustee an EMA Certification Form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by 90 Days after the Trust Effective Date; and (iii) stating the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying Indian Tribe, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3. In accordance with this schedule, the Trustee filed a Notice of Beneficiary Designation with the Court on January 29, 2018, which designated 29 Indian Tribes as Beneficiaries pursuant to the terms of the Indian Tribe Trust Agreement. The Notice of Beneficiary Designation stated that two Tribes of the 29 designated Beneficiaries did not file a Beneficiary Status Certification Form (Appendix D-3) and an EMA Certification Form (Appendix D-4) by the deadline for the first funding cycle, and are not eligible to participate in the first funding cycle.¹ In addition, one Tribe of the 29 designated Beneficiaries applied for the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), did not receive a DERA Award from EPA, and is not eligible to participate in the first funding cycle.² As provided in subparagraph 4.0.2.4, once a Certifying Entity has been deemed a Beneficiary, it remains a Beneficiary for all future funding cycles and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

¹ These two Tribes are the Southern Ute Indian Tribe and the Swinomish Indian Tribal Community.

² This Tribe is the San Manuel Band of Mission Indians.

(b) Other Funding Cycles. For funding cycles after the first funding cycle, the Trustee shall post a notice on the Indian Tribe Trust's public-facing website by October 3, 2018 (for the second funding cycle), October 3, 2019 (for the third funding cycle), and October 2, 2020 (for the fourth funding cycle and any subsequent funding cycles) stating that: (i) each Indian Tribe, which has not yet been designated a Beneficiary by the Trustee, may seek to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2 by the following deadlines: for the second funding cycle -- December 3, 2018; for the third funding cycle -- December 3, 2019; and for the fourth funding cycle and any subsequent funding cycles -- December 3, 2020; and (ii) the Trustee will determine and post a Notice of Beneficiary Designation of each certifying Indian Tribe by the deadline set in subparagraph 4.0.2, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3.

5.0.5.2 Four Funding Cycles. The assets in the Tribal Allocation Subaccount shall be committed to Beneficiaries over four funding cycles as follows: (i) no more than one-sixth of total remaining assets in the Tribal Allocation Subaccount may be committed during the first funding cycle; (ii) no more than one-third of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one-half of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; and (iv) the remaining assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle. In the event uncommitted funds remain in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the fourth funding cycle, such funds may be made available for a fifth funding cycle in accordance with the procedure in subparagraphs 5.0.5.3.4 through 5.0.5.3.5. For purposes of this subparagraph 5.0.5.2, "remaining assets" shall mean the amount on deposit in the Tribal Allocation Subaccount on the following dates: (i) December 31, 2017 for the first funding cycle; (ii) December 31, 2018 for the second funding cycle; (iii) December 31, 2019 for the third funding cycle; and (iv) December 31, 2020 for the fourth funding cycle; and "uncommitted funds" shall mean the amount on deposit in the Tribal Allocation Subaccount on December 31, 2021 for the fifth funding cycle (if it occurs).

5.0.5.3 In order to ensure an equitable allocation of funds in the Tribal Allocation Subaccount among Beneficiaries to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, the Trustee shall apply the allocation method set forth below in each funding cycle.

5.0.5.3.1 Group Division Based on 2010 United States Census Table PCT4. The 2010 United States Census Table PCT4 shall provide the only population statistics used for the Indian Tribe Trust Agreement as provided herein, and was used to compile the Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas (Appendix

D-8) (“Alignment Table”). For the avoidance of doubt, the population statistics in the Alignment Table shall not be updated or revised for the life of the Indian Tribe Trust Agreement. Based on the 2010 United States Census Table PCT4 and application of a Jenks Grouping algorithm ranking population based on statistical analysis, the Indian Tribes have been divided into three Groups: (1) Group One with a population range of 0 to 16,906; (2) Group Two with a population range of 16,907 to 47,649; and (3) Group Three with a population of 47,650 and above. Group One consists of 558 Tribes, which represent 51.52 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; Group Two consists of 6 Tribes, which represent 10.61 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; and Group Three consists of 4 Tribes, which represent 37.87 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes. This categorization, which is reflected in the Alignment Table (Appendix D-8), shall form the basis for part of the allocation (i.e., the pro rata population-based allocation) in each funding cycle. These three Groups shall not be adjusted except as specifically set forth in the Alignment Table (Appendix D-8) with respect to any new federally recognized Indian Tribes. If any new Indian Tribe is recognized by the United States, in order to participate as a Beneficiary in the Indian Tribe Trust, that Indian Tribe shall file with the Court a Beneficiary Status Certification Form (Appendix D-3), and concurrently deliver to the Trustee a Beneficiary Status Certification Form (Appendix D-3) together with official documentation of such federal recognition as an Indian Tribe by the deadlines set forth in Paragraph 4.0 for the respective funding cycle. For purposes of this Indian Tribe Trust, all new federally recognized Indian Tribes shall be deemed to be members of Group One with a zero population for all funding cycles.

5.0.5.3.2 First Funding Cycle. Twenty-six Indian Tribes, which were designated as Beneficiaries and submitted an approvable funding request by the filing deadline for the first funding cycle, are eligible to participate in the first funding cycle. Within 10 Business Days after the Trust Modification Effective Date, the Trustee shall implement the steps below for the first funding cycle:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the first funding cycle equally among the 26 Beneficiaries participating in the first funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the first funding cycle into three separate funding pools, allocating 51.52 percent to Group One,

10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups (Group One, Group Two, and Group Three), the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Funding Limit. The Trustee shall limit the allocation of funding for a Beneficiary to no more than the amount that the Beneficiary requested in its original EMA Certification Form (Appendix D-4). The Trustee shall reallocate any "overage" among the Beneficiaries in the first funding cycle that did not -- after application of Steps 1 and 2 -- receive the full amount of funding that the Beneficiary had requested in its original EMA Certification Form (Appendix D-4) (the "Remaining Beneficiaries"). This reallocation of the overage shall be based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.³ The population for each Indian Tribe shall be determined in accordance with the population statistics in the 2010 United States Census Table PCT4 as set forth in the Alignment Table (Appendix D-8).

Step 4: Notice. Within ten Business Days after applying the allocation rules in Steps 1 through 3, the Trustee shall transmit notice to each of the 26 Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee a revised EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the first funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit a revised EMA Certification Form (Appendix D-4), that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. The Beneficiary's revised EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries

³ For example, assume a Beneficiary requested funding of \$200,000 for the first funding cycle, but application of Steps 1 and 2 would result in a projected allocation of \$350,000 for that Beneficiary. The "overage" of \$150,000 would be reallocated among the Remaining Beneficiaries based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.

in the first funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the first funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.3 Second through Fourth Funding Cycles. Within 5 Business Days after filing a Notice of Beneficiary Designation pursuant to subparagraph 4.0.2 for the second through fourth funding cycles, the Trustee shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks stating that any Beneficiary that would like to participate in the respective funding cycle shall submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6) by the following deadlines: for the second funding cycle -- March 1, 2019; for the third funding cycle -- March 2, 2020; for the fourth funding cycle -- March 1, 2021. Based on its receipt of timely-filed Designated Beneficiary's Participation Notices (Appendix D-6), the Trustee shall determine the number of participating Beneficiaries for each respective funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses and describes five "Exception Variants" that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in a given funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after the receipt of Designated Beneficiary's Participation Notices (Appendix D-6) that were timely filed by the deadline for each funding cycle, the Trustee shall apply the allocation rules in Steps 1, 2, and 3 in each funding cycle, and shall transmit notice to each of the participating Beneficiaries via Intralinks

regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

After the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7) by the following deadlines: May 10, 2019 (for the second funding cycle); May 11, 2020 (for the third funding cycle), and May 10, 2021 (for the fourth funding cycle). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in each funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in that funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.4 Trustee's Accounting. By August 12, 2021, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously designated a Beneficiary hereunder, and publish on its public-facing website, an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs for the Tribal Allocation Subaccount. The difference between these two amounts shall be referred to as the "Tribal Subaccounts Remainder Balance." After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by September 13, 2021, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.

5.0.5.3.5 Fifth Funding Cycle. In accordance with the procedures set forth in subparagraph 5.0.5.3.4, the Trustee may provide notice to the Beneficiaries via Intralinks that the Tribal Subaccounts Remainder Balance is available for a fifth funding cycle. If there are sufficient funds for the fifth funding cycle, by the funding request deadline of December 1, 2021, any Indian Tribe that has been deemed a Beneficiary hereunder and would like to participate in the fifth funding cycle may submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6). Based on its receipt of timely-filed Designated Beneficiary's Participation Notices, the Trustee shall determine the number of participating Beneficiaries for the fifth funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the fifth funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the fifth funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses five Exception Variants that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in the fifth funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within fifteen Business Days after December 31, 2021, the Trustee shall apply the allocation rules in Steps 1, 2, and 3, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt

Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the fifth funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the fifth funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.4 Any Beneficiary may use any share of its allocation for Eligible Mitigation Projects on Indian Land or in areas that are not Indian Land.

5.1 Eligible Mitigation Actions and Expenditures: The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures).

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding by filing with the Trustee an EMA Certification Form (Appendix D-4), containing each of the certifications required by subparagraphs 5.2.2 through 5.2.13, as applicable. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 Intentionally Reserved.

5.2.2 A detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits;

5.2.3 An estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;

5.2.4 A project management plan for the proposed Eligible Mitigation Action, including a detailed budget and an implementation and expenditure timeline;

5.2.5 A certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable;

5.2.6 For each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors;

5.2.7 A detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action, including, but not limited to:

5.2.7.1 Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law; and

5.2.7.2 A commitment by the Beneficiary to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the Beneficiary shall make such documentation publicly available;

5.2.8 A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;

5.2.9 A description of how the Beneficiary complied with subparagraph 4.2.8;

5.2.10 If applicable, a description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and

5.2.11 A detailed plan for reporting on Eligible Mitigation Action implementation.

5.2.12 DERA Option. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may use its DERA proposal as support for its funding request for those Eligible Mitigation Actions funded through the DERA Option. In order to qualify for funding for the DERA Option under Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the Beneficiary must deliver a copy of an EPA DERA selection letter to the Trustee by the deadline to timely submit an EMA Certification Form (Appendix D-4) for a particular funding cycle pursuant to either subparagraph 5.0.5.3.3 or subparagraph 5.0.5.3.5.

5.2.13 Joint Application. After the requirements of subparagraph 5.0.5 have been satisfied and the Trustee has made its allocation determination of the amount of funding available for each participating Beneficiary in a funding cycle, two or more participating Beneficiaries may submit a joint request to fund an Eligible Mitigation Action using their combined allocation. In order to submit a Joint Application, each participating Beneficiary must comply with all requirements individually as set forth herein. Upon receipt of the Trustee's allocation determination of available funding pursuant to Step 4 of subparagraphs 5.0.5.3.2, 5.0.5.3.3 or 5.0.5.3.5, each Indian Tribe interested in pursuing a joint request to fund an Eligible Mitigation Action shall complete an individual EMA Certification Form (Appendix D-4) that: (1) cross-references the other interested Indian Tribe's EMA Certification Form (Appendix D-4); (2) makes all the required certifications on behalf of each Indian Tribe individually; and (3) explains how the two individually allocated amounts will be used to jointly fund the Eligible Mitigation Action in that funding cycle. Both individual EMA Certification Forms (Appendix D-4) must be approved in accordance with subparagraph 5.2.16 before any disbursement of funds will be made by the Trustee.

5.2.14 Publication of Funding Requests. The Trustee shall post on the Indian Tribe Trust's public-facing website a copy of each approved EMA Certification Forms (Appendix D-4) and a list of each Beneficiary that filed a Beneficiary's Election to Opt Out Form (Appendix D-7) for each funding cycle 15 Days after the distribution of funds for each funding cycle.

5.2.15 Reliance on Form. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any EMA Certification Form (Appendix D-4) reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Indian Tribe Trust Agreement and its Appendices. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information according to the following schedule: for the first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if the Trustee requests a modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee's request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary. A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures). Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form). The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

5.2.16.1 Disbursement of Funds. Each Beneficiary must complete all required documentation for the Trustee relating to incumbency and its security procedures prior to receiving any funds. Provided these conditions have been met by the Beneficiary, the Trustee shall begin disbursing funds within 15 Days of approval of an Eligible Mitigation Action funding request according to the written instructions and schedule provided by the Beneficiary, unless

such date is not a Business Day and then the payment shall be made on the next succeeding Business Day.

5.2.16.2 Publication of Allocated Funds. Within 15 Days after the distribution of funds to Beneficiaries in each funding cycle, the Trustee shall post on the Indian Tribe Trust's public-facing website a listing of the amount received by each Beneficiary for each funding cycle.

5.2.17 Unused Eligible Mitigation Action Funds. Upon the termination or completion of any Eligible Mitigation Action, any unused Eligible Mitigation Action funds shall be returned to the Indian Tribe Mitigation Trust and added back to the Tribal Allocation Subaccount.

5.3 Beneficiary Reporting Obligations: For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to the Trustee a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action. Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this Paragraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

5.4 Supplemental Funding for Eligible Beneficiaries and Final Disposition of Trust Assets

5.4.1 Intentionally Reserved.

5.4.2 Intentionally Reserved.

5.4.3 Intentionally Reserved.

5.4.4 Intentionally Reserved.

5.4.5 Final Disposition of Indian Tribe Trust Assets. Not later than October 2, 2024, the seventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the seventh anniversary of the Trust Effective Date, any Trust Assets held in the Indian Tribe Trust Account or any subaccount (including, but not limited to, the Tribal Allocation Subaccount

and the Tribal Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the Indian Tribe Trust to fund Eligible Mitigation Actions administered by Federal Agencies that have custody, control, or management of land in the United States that is impacted by excess NOx emissions (including, but not limited to, Clean Air Act Class I and II areas) and that have the legal authority to accept such funds, in accordance with instructions to be provided by the United States. If no such Federal Agencies exist, the United States will file a motion, with notice to the Defendants and the Beneficiaries, requesting the Court to order that any Trust Assets held in the Indian Tribe Trust Account (or any subaccount thereof) be distributed either to a governmental unit or to another trust, the income of which is excluded from gross income under the provisions of Internal Revenue Code Section 115, 26 U.S.C. § 115.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Indian Tribe Trust: In accordance with subparagraph 3.1.2.3, the Trustee shall establish and maintain a secure method of internet-based communications, initially Intralinks, for the use of the Trustee and the Beneficiaries that will: (1) enable each Beneficiary to deliver the required documentation under this Indian Tribe Trust Agreement in an electronic format; (2) enable secure communications between the Trustee and each Beneficiary; and (3) provide each Beneficiary with access to its own document base. In addition, each Beneficiary will have the ability to view the balance in the Tribal Allocation Subaccount in the Trustee's monthly statement in the Intralinks General Information folder. Any notices required to be provided by the Trustee to the Beneficiaries hereunder shall be deemed to have been properly and sufficiently provided hereunder if the Trustee posts such notice on Intralinks or any successor secure method of internet-based communications in use by the Trustee at that time.

6.0.1 Addresses for Delivery of Physical Copies of Documentation and Notices.

Indian Tribe Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

E-mail: VW_settlement@epa.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

Technical Assistance Provider:

Institute for Tribal Environmental Professionals
Attn: Executive Director
Northern Arizona University
P.O. Box 15004
Flagstaff, AZ 86011-5004

Defendants:

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Audi AG by mail:

Audi AG
Auto-Union-Strasse 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America, Inc. by mail:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America Chattanooga Operations, LLC by mail:

Volkswagen Group of America Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.

Herndon, VA 20171
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1
D-70435 Stuttgart
Attention: GR/Rechtsabteilung/General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to: offsecy@porsche.us

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Granta Nakayama
Cari Dawson

giuffrar@sullcrom.com
nelles@sullcrom.com
gnaayama@kslaw.com
cari.dawson@alston.com

As to one or more of the Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004

Granta Nakayama
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

Cari Dawson
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

6.1 Jurisdiction: The U.S. District Court for the Northern District of California shall be the sole and exclusive forum for the purposes of enforcing this Indian Tribe Mitigation Trust and resolving disputes hereunder, including the obligations of the Trustee to perform its obligations hereunder, and each of the Consent Decree Parties, the Indian Tribe Mitigation Trust, the Trustee, and each Beneficiary, expressly consents to such jurisdiction.

6.2 Dispute Resolution: Unless otherwise expressly provided for herein, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve any dispute between or among the Indian Tribes, the Consent Decree Parties, and the Trustee arising under or with respect to this Indian Tribe Trust Agreement. The United States is a necessary party to any Dispute Resolution process under this Indian Tribe Trust.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Indian Tribe Trust Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the disputing party sends to the counterparty a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the disputing parties cannot resolve the dispute by informal negotiations, then the disputing party may invoke formal dispute resolution procedures as set forth below.

6.2.2 Formal Dispute Resolution. The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the disputing party's position and any supporting documentation and legal authorities relied upon by the disputing party. The counterparty shall serve its Statement of Position within 30 Days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis, or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing parties are unable to consensually resolve the dispute within 30 Days after the counterparty serves its Statement of Position on the disputing party, the disputing party may file with the Court a motion for judicial review of the dispute in accordance with the following subparagraph.

6.2.3 Judicial Review. The disputing party may seek judicial review of the dispute by filing with the Court and serving on the counterparty and the United States, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation, and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Indian Tribe Trust. The counterparty shall respond to the motion within the time period allowed by the Local Rules of the Court, and the disputing party may file a reply memorandum, to the extent permitted by the Local Rules.

6.3 Choice of Law: The validity, interpretation, and performance of this Indian Tribe Mitigation Trust shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. The duties, rights, protections, and immunities of the Trustee, as a trustee of a statutory trust under the Delaware Act, shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. This Indian Tribe Trust Agreement shall not be subject to any provisions of the Uniform Trust Code as adopted by any State, now or in the future. This Indian Tribe Trust Agreement shall be interpreted in a manner that is consistent with the Consent Decree, provided, however, that in the event of a conflict between the Consent Decree and this Indian Tribe Trust Agreement, this Indian Tribe Trust Agreement shall control.

6.4 Waiver of Jury Trial: Each party hereto and each Beneficiary hereof hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Indian Tribe Trust.

6.5 Modification: Material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Indian Tribe Mitigation Trust. Any modification of this Indian Tribe Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the Indian Tribe Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form) may be made upon written agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement among the United States, the Trustee, and the technical assistance provider, as necessary to enable the Trustee and the technical assistance to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. To the extent the consent of the Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Defendants, no modification shall: (i) require the Defendants to make any payments to the Indian Tribe Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the Indian Tribe Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Indian Tribe Mitigation Trust, whether material or minor, before such modification shall become effective; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

6.6 Severability: If any provision of this Indian Tribe Trust Agreement or application thereof to any person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Indian Tribe Trust Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected thereby, and such provision of this Indian Tribe Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

6.7 Taxes: The Indian Tribe Mitigation Trust is intended to be a qualified settlement fund (“QSF”) pursuant to Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. The Trustee is intended to be the Indian Tribe Trust’s “administrator,” within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The Trustee shall use its best efforts to submit, within six months after the Trust Effective Date, an application and all necessary supporting documentation to the IRS to obtain a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust. Within ten Days after any application has been made to the IRS, the Trustee shall provide a copy of the application and accompanying documentation to the United States (pursuant to subparagraph 6.0.1) and to the known Beneficiaries (pursuant to the secure internet-based communication in Paragraph 6.0). Within seven Days after receipt of any IRS Private Letter Ruling, the Trustee shall provide a copy to the United States (pursuant to subparagraph 6.0.1) and the known Beneficiaries (pursuant to the secure internet-based communication established in Paragraph 6.0). The Trustee shall be responsible for filing all required Tax Returns, ensuring compliance with income tax withholding and reporting requirements, and paying applicable Taxes with respect to the Indian Tribe Trust in a manner consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established pursuant to subparagraph 2.1.5. The Defendants shall provide to the Trustee and the IRS the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Settling Defendants make a transfer to the Indian Tribe Trust.

6.8 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, final reports have been delivered pursuant to Paragraph 3.3 and subparagraph 3.3.1, and notice regarding retained documents has been provided pursuant to subparagraph 3.3.2, the Trustee may file a motion with the Court requesting an order to begin the process under the Delaware Act to terminate this Indian Tribe Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. After the Court approves the motion to terminate, the Trustee shall begin the dissolution and winding up processes under the Delaware Act. On the date that the Trustee completes all the statutory requirements under the Delaware Act and files a certificate of cancellation, this Indian Tribe Trust shall terminate (the “Termination Date”).

6.9 Appendices: The following appendices are attached to and part of the Indian Tribe Trust Agreement:

Appendix D-1 - Initial Allocation

Appendix D-1A - Initial 3.0 Liter Allocation

Appendix D-1B - Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures

Appendix D-3 - Certification for Beneficiary Status under Environmental Mitigation Trust Agreement

Appendix D-4 - Beneficiary Eligible Mitigation Action Certification

Appendix D-5 - Form of Certificate of Trust of Volkswagen Diesel Emissions
Environmental Mitigation Trust for Indian Tribe Beneficiaries
Appendix D-6 - Designated Beneficiary's Participation Notice
Appendix D-7 - Beneficiary's Election to Opt Out Form
Appendix D-8 - Alignment Table of Federally Recognized Indian Tribes to 2010 U.S.
Geographic Census Areas

FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES:

WILMINGTON TRUST, N.A., AS TRUSTEE FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES, AND NOT IN ITS INDIVIDUAL CAPACITY

Date:

David A. Vanaskey, Jr.
Administrative Vice President

By their execution of this Indian Tribe Trust Agreement each undersigned party represents that they are authorized signer for such Company entitled to sign on behalf of each Settling Defendant and that each of the Settling Defendants have taken all necessary corporate actions required to make this a legal, valid and binding obligation of each such Settling Defendant.

FOR VOLKSWAGEN AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

Date

ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
WILLIAM B. MONAHAN
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giuffrar@sullcrom.com
nelles@sullcrom.com
monahanw@sullcrom.com

FOR DR. ING. h.c. F. PORSCHE AG:

Date:

Member of the Executive Board
Research and Development
DR. ING. h.c. F. PORSCHE
AKTIENGESELLSCHAFT
Porschestrasse 911
71287 Weissach, Germany

Date:

ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c. F. PORSCHE
AKTIENGESELLSCHAFT
Porscheplatz 1
70435 Stuttgart-Zuffenhausen, Germany

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date:

JOSEPH S. FOLZ
Vice President, General Counsel and Secretary
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

Date:

GLENN GARDE
Vice President, After Sales
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA, INC.

Date:

GRANTA NAKAYAMA
JOSEPH A. EISERT
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gnakayama@kslaw.com
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Date:

CARI DAWSON
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
cari.dawson@alston.com

ATTACHMENT B
Redlined Edits to Indian Tribe Trust
Agreement

Attachment B (Redlined Edits to Indian Tribe Trust Agreement) to
U.S. Request for Court Approval of Modifications
MDL No. 2672 CRB (JSC)

**ENVIRONMENTAL MITIGATION TRUST AGREEMENT
FOR INDIAN TRIBE BENEFICIARIES
(as modified on ~~June~~ **August 13**, 2018)**

On October 25, 2016, the Court entered a Partial Consent Decree (“First Partial Consent Decree”) in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the “Settling Defendants”), the United States, and the State of California. In that case, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the “Defendants”), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the “Trustee”): (1) hereby enter into this Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the “Indian Tribe Trust Agreement”) and establish the environmental mitigation trust described in that agreement (“Indian Tribe Mitigation Trust” or “Indian Tribe Trust”); and (2) concurrently enter into a separate Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the “State Trust Agreement”) and establish the environmental mitigation trust described in that agreement (the “State Mitigation Trust” or “State Trust”). The Defendants and the Trustee acknowledge that the purpose of the Indian Tribe Mitigation Trust and the State Mitigation Trust is to fulfill the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the Indian Tribe Mitigation Trust and the State Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants’ environmental mitigation obligations under the First Partial Consent Decree and the Defendants’ environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the Indian Tribe Mitigation Trust and the State Mitigation Trust. The Indian Tribe Mitigation Trust and the State Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the First Partial Consent Decree and the Second Partial Consent Decree (jointly, the “Consent Decree”), and in accordance with the following allocation: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.01% to the Indian Tribe Mitigation Trust; and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.3% to the Indian Tribe Mitigation Trust.

PURPOSE AND RECITALS

Whereas, the Defendants are required to establish this Indian Tribe Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) where the Subject Vehicles were, are, or will be operated (“Eligible Mitigation Actions”), and to pay for Trust Administration Costs as set forth in this Indian Tribe Trust Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe Trust Agreement and the State Trust Agreement is intended to fully mitigate the total, lifetime

excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated;

Whereas, the Defendants hereby establish this Indian Tribe Mitigation Trust to provide funds for Eligible Mitigation Actions and Trust Administration Costs;

Whereas, the Trustee has been selected to be the trustee under this Indian Tribe Trust Agreement in accordance with the requirements set forth in the First Partial Consent Decree;

Whereas, the Trustee is willing to act as trustee in accordance with the terms of this Indian Tribe Trust Agreement;

Whereas, on ~~June~~ **August 13**, 2018, the Defendants and the Trustee agreed to certain material modifications to the Indian Tribe Trust Agreement that are reflected herein;

Whereas, the United States will lodge the modified Indian Tribe Trust Agreement with the Court and will accept comments from interested Indian Tribes for a 30-day period after lodging; and

Whereas, after the comment period, the United States will either file a motion requesting the Court to approve the modifications in accordance with Paragraph 6.5 or seek other relief from the Court;

Now, therefore, the Defendants and the Trustee agree as follows:

I. DEFINITIONS

1.0 Unless otherwise defined in this Indian Tribe Trust Agreement, all capitalized terms used herein shall have the meaning set forth in the Consent Decree.

1.1 “2010 United States Census Table PCT4” shall mean Table PCT4 (entitled “American Indian and Alaska Native Alone or in Combination with One or More Other Races”) of the United States national census conducted by the U.S. Census Bureau in 2010.

1.2 “Beneficiary” shall mean each Indian Tribe determined to be a Beneficiary pursuant to Section IV (Indian Tribe Mitigation Trust Beneficiaries) and subparagraphs 2.1.2 and 5.0.5.

1.3 “Beneficiary Status Certification Form” shall mean the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form that is attached as Appendix D-3 to this Indian Tribe Trust Agreement.

1.4 “Business Day” means, with respect to any delivery requirement, deadline, or payment under this Indian Tribe Trust Agreement, each Monday, Tuesday, Wednesday, Thursday, and Friday that is not a day on which the Trustee in the State of Delaware or, as to a specific Beneficiary, a day on which that Beneficiary under this Indian Tribe Trust is authorized or obligated by law, regulation, or executive order to close.

1.5 “Claims” shall mean any and all losses, liabilities, claims, actions, suits, or expenses, of any nature whatsoever, including legal fees and expenses.

1.6 “Consent Decree” shall mean the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.7 “Court” shall mean the United States District Court for the Northern District of California.

1.8 “Court’s Approval Order” shall mean the Court’s Order dated _____, 2018, approving the modifications to the Indian Tribe Trust Agreement in this matter. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. ___.

1.9 “Day” shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Indian Tribe Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal or Delaware holiday, the period shall run to the close of business of the next Business Day;

1.10 “Delaware Act” shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.11 “DERA” shall mean the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. §§ 16131-16139).

1.12 “Eligible Mitigation Action” shall mean any of the actions listed in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement.

1.13 “Eligible Mitigation Action Administrative Expenditure” shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

1.14 “EMA Certification Form” shall mean the Beneficiary Eligible Mitigation Action Certification form that is attached as Appendix D-4 to this Indian Tribe Trust Agreement.

1.15 “Federal Agency” shall mean any agency of the United States government.

1.16 “First Partial Consent Decree” shall mean the Partial Consent Decree entered by the Court in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), on October 25, 2016.

1.17 “Force Majeure” shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.18 “Indian Land” shall mean the lands of any Indian Tribe or within Indian country.

1.19 “Indian Tribe” shall mean any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe, as provided in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018), which will be updated from time to time.

1.20 “Indian Tribe Trust Agreement” shall mean the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries approved by the Court on September 19, 2017, *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 49, the modifications thereto as approved by the Court’s Approval Order, and the fully executed version filed with the Court on the Trust Modification Effective Date.

1.21 “Investment Manager” shall mean Wilmington Trust, N.A., acting solely in its role as the professional investment manager of Trust Assets in accordance with subparagraph 3.2.2 of this Indian Tribe Trust Agreement and the Investment Management Agreement entered into on the Trust Effective Date. In subparagraphs 2.2.4, 3.1.2.8, 3.5.3 (last sentence), 3.5.6, and 3.5.7 of the Indian Tribe Trust Agreement, each reference to the Investment Manager shall include the Investment Manager and its officers, directors, and employees.

1.22 “IRS” shall mean the Internal Revenue Service.

1.23 “Second Partial Consent Decree” shall mean the Second Partial Consent Decree entered by the Court in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 3228-1), on May 17, 2017.

1.24 “Shared State and Indian Tribe Administration Costs” shall mean the costs, fees, and expenses of: (1) establishing and maintaining the Trustee’s public-facing website; and (2) establishing and maintaining a secure method of internet-based communication for the Trustee and Beneficiaries.

1.25 “Start-up Costs” shall mean all fees, costs, and expenses incurred in connection with establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust and setting them up for operation. Start-up costs shall not include the cost of premiums for insurance policies.

1.26 “Subject Vehicles” shall mean: (i) the “2.0 Liter Subject Vehicles,” as defined in the First Partial Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1); and (ii) the “3.0 Liter Subject Vehicles,” as defined in the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.27 “Tax” or “Taxes” shall mean all federal, state, and local taxes that may be imposed on the Trust by any taxing authority.

1.28 “Tax Professionals” shall mean all accountants and tax lawyers hired to assist the Trustee with the Trust’s reporting obligations, tax filings, audits, and all other tax and accounting-related activities, including efforts to obtain and, if granted, maintain the IRS Private Letter Ruling as described in subparagraph 3.1.2.7 and Paragraph 6.7 of this Indian Tribe Trust Agreement.

1.29 “Tax Return” or “Tax Returns” shall mean all required federal, state, and local tax returns and information returns, including any returns associated with compliance with withholding and reporting requirements.

1.30 “Termination Date” shall mean the date that the Indian Tribe Trust terminates pursuant to Paragraph 6.8 of this Indian Tribe Trust Agreement.

1.31 “Trust Administration Costs” shall mean all expenditures of Trust Assets by the Trustee.

1.32 “Trust Effective Date” shall mean October 2, 2017, the date that the United States filed the fully executed final version of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1.33 “Trust Modification Effective Date” shall be _____, 2018, the date that the United States filed the fully executed version of the ~~June~~August 13, 2018 modification of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.); ~~Dkt. No. —~~.

1.34 “Trustee” shall mean Wilmington Trust, N.A., acting solely in its role as the Trustee of this Indian Tribe Mitigation Trust as appointed in accordance with Paragraph 3.0, or a successor trustee pursuant to subparagraph 3.7.2. In subparagraphs 2.2.4, 3.1.2.8, 3.5.2, 3.5.3, 3.5.6, and 3.5.7 of this Indian Tribe Trust Agreement, each reference to the Trustee shall include the Trustee and its officers, directors, and employees.

1.35 “United States” shall mean the United States of America, acting on behalf of the U.S. Environmental Protection Agency (“EPA”).

II. INDIAN TRIBE MITIGATION TRUST

2.0 Establishment of the Indian Tribe Mitigation Trust

2.0.1 Irrevocable Establishment. The Defendants hereby and irrevocably establish this Indian Tribe Mitigation Trust on behalf of the Beneficiaries in the form of a statutory trust under the Delaware Act, which shall bear the name “Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.” In connection with the Trustee’s power hereunder, the Trustee may use this name or a variation thereof. The Trustee is hereby authorized and directed to execute and file a Certificate of Trust for the Indian Tribe Mitigation Trust in the form attached hereto as Appendix D-5. The Trustee hereby accepts and agrees to hold the assets owned by the Indian Tribe Mitigation Trust

(“Trust Assets”) for the benefit of the Beneficiaries and for the purposes described herein and in the Consent Decree.

2.0.2 Trustee. In accordance with Paragraph 3.0 below, on the Trust Effective Date, the Trustee, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee in accordance with the Consent Decree to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Indian Tribe Mitigation Trust to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Indian Tribe Trust Agreement, and to provide funds for the administration and operation of this Indian Tribe Trust in accordance with this Indian Tribe Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

2.0.4 Creation and Use of Indian Tribe Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account (“Indian Tribe Trust Account”), and file with the Court a designation and identification of the Indian Tribe Trust Account. The purpose of the Indian Tribe Trust Account shall be to receive deposits from the Defendants (directly or through the Court Registry) pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, to hold them in trust, to receive income and gains from any investment of Trust Assets (collectively, “Trust Funds”), and to make disbursements to fund Eligible Mitigation Actions by Beneficiaries and to pay Trust Administration Costs, all in accordance with the Consent Decree and this Indian Tribe Trust Agreement. Disbursements shall be directed by each Beneficiary pursuant to a Beneficiary Eligible Mitigation Action Certification form (“EMA Certification Form”) (Appendix D-4) delivered to the Trustee in accordance with Paragraph 5.2. Unless otherwise agreed by the parties to the Consent Decree (“Consent Decree Parties”), the Indian Tribe Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Indian Tribe Trust Account Divisions. The Indian Tribe Trust Account may be divided into such number of discrete trust subaccounts dedicated for specific purposes as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and to implement, the Consent Decree and this Indian Tribe Trust Agreement.

2.1 Funding of the Indian Tribe Mitigation Trust: The Settling Defendants shall fund the Indian Tribe Mitigation Trust as required by the First Partial Consent Decree, and the Defendants shall fund the Indian Tribe Mitigation Trust as required by the Second Partial Consent Decree. The Trustee shall allocate to the Indian Tribe Mitigation Trust the following amounts: (1) 2.01% of the Mitigation Trust Payments from the First Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account, and (2) 2.3% of the Mitigation Trust Payments from the Second Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Indian Tribe Trust Account the funds allocated to the Tribal Allocation Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for a technical assistance provider in accordance with subparagraph 2.1.1.1. After lodging the First Partial Consent Decree, the United States consulted with interested Indian Tribes for a 60-Day period ("Consultation Process"), in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those Indian Tribes that are deemed Beneficiaries hereunder, including setting aside 5% of those funds to be directed towards technical assistance to enable Indian Tribes to prepare funding requests for Eligible Mitigation Actions.

2.1.1.1 Technical Assistance Provider. In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference for using an established technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions. Accordingly, the Trustee agrees: (1) to set aside 5% of the Tribal Allocation Subaccount into a separate subaccount, the Technical Assistance Provider Subaccount, for record keeping purposes only, to be disbursed to a technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions; and (2) consistent with comments received from Indian Tribes during the Consultation Process, to select the Institute for Tribal Environmental Professionals as the technical assistance provider for these purposes. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any budget, semiannual report, or other document from the technical assistance provider reasonably believed by the Trustee to be genuine and to have been signed or sent by the proper person or persons.

2.1.1.2 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form ("Beneficiary Status Certification Form") (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA

Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider's review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. The technical assistance provider's report relating to its review of the EMA Certification Forms (Appendix D-4) shall be delivered to the Trustee five Business Days before the Trustee's deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in subparagraph 5.2.16. If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

- 2.1.1.3 **Budget.** In order to fund its services, the technical assistance provider shall submit to the Trustee, in electronic and hard-copy formats, an annual budget for its services in each year. The annual budget shall be submitted 45 Days before the commencement of the applicable budget period for review by the Trustee, and shall include: (i) a detailed description of the proposed services described above in subparagraph 2.1.1.2; (ii) a proposed management plan for the proposed services, including a detailed budget for proposed expenses for the upcoming year, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.4; (iv) a certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable; (v) for each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors; (vi) a detailed description of how the technical services provider will oversee the proposed services, including, but not limited to: identification of the specific entity responsible for reviewing and auditing expenditures of funds to ensure compliance with applicable law, and a commitment by the technical assistance provider to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the technical assistance provider shall make such documentation publicly available; and (vii) a detailed plan for reporting on implementation that meets the requirements of subparagraph 2.1.1.5. The technical assistance provider shall provide additional

information as requested by the Trustee. The Trustee shall post each proposed annual budget on the Indian Tribe Trust's public-facing website upon receipt. The Trustee must approve the annual budget for the technical assistance provider's services before disbursing funds for the budget. Pursuant to the procedures and schedules in subparagraphs 5.2.16 and 5.2.16.1, the Trustee shall approve any funding request in the technical assistance provider's budget that meets the requirements of this subparagraph 2.1.1.3, and shall disburse funds according to the written instructions provided by the technical assistance provider. In connection with a modification of this Indian Tribe Trust Agreement, the technical assistance provider may revise its initial budget to take into account factors including the scope of tasks listed in subparagraph 2.1.1.2 and the reduction in the number of funding cycles in subparagraph 5.0.5.2.

- 2.1.1.4 Limits on Indirect Costs. The technical assistance provider's indirect costs associated with administering the technical assistance portion of the Tribal Allocation Subaccount shall not exceed 30.9% of the overall costs in providing technical assistance under subparagraph 2.1.1.1 (i.e., of the 5% portion that will be used for technical assistance, no more than 30.9% of the 5% portion may consist of indirect costs). For purposes of this subparagraph, "indirect costs" are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. As required by subparagraph 2.1.1.3, the technical assistance provider shall separately set forth the indirect costs in each annual budget submitted to the Trustee. These indirect costs are subject to the limitations in the Federal Acquisition Regulations at 48 C.F.R. § 31.205.
- 2.1.1.5 Reporting Obligations. No later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, the technical assistance provider shall provide a semiannual report to the Trustee describing the progress implementing the technical assistance services during the six-month period leading up to the reporting date (including a summary of all costs expended on the services through the reporting date). Such reports shall include a complete description of the status, development, and implementation of the services. These reports shall be signed by an official with the authority to submit the report for the technical assistance provider and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.
- 2.1.1.6 Unused Funds. Upon the termination or completion of services by the technical assistance provider, any unused funds shall be returned by the

technical assistance provider to the Indian Tribe Trust and added back to the Tribal Allocation Subaccount. Not later than December 31, 2022, any unused funds held by the technical assistance provider shall be returned to the Indian Tribe Trust.

2.1.2 Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests.

2.1.2.1 Establishment of Beneficiary Status. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court a Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Beneficiary Status Certification Form with the Court, each Indian Tribe shall also concurrently provide a copy of the Beneficiary Status Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1.

2.1.2.2 Designated Beneficiary's Participation Notice. Beginning with the second funding cycle, after an Indian Tribe has been designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1, that Indian Tribe Beneficiary may participate in the second and any subsequent funding cycle by submitting to the Trustee, pursuant to subparagraphs 5.0.5.3.3 and 5.0.5.3.5, a Designated Beneficiary's Participation Notice (Appendix D-6) by the deadline established for each funding cycle in which it would like to participate.

2.1.2.3 Funding Requests. In any request for Eligible Mitigation Action funding submitted to the Trustee by any Beneficiary, the Beneficiary shall timely submit an EMA Certification Form (Appendix D-4) for each funding cycle, and shall comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Each allocation provided to any Indian Tribe that is designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1 shall be subject to Paragraph 5.3 and subparagraphs 5.0.5, 5.2.17, and 5.4.5.

2.1.3 Intentionally Reserved.

2.1.3.1 Intentionally Reserved.

2.1.3.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall establish a Tribal Administration Cost Subaccount that shall be funded in accordance with the specific allocation for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). The funds in this subaccount shall be used exclusively to

pay for the Indian Tribe Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee, consistent with the weighted average allocation percentage of 2% set forth in Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), may also draw upon this account to pay 2% of the Start-up Costs and 2% of the Shared State and Indian Tribe Administration Costs, in accordance with Paragraph 3.6. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Trust Administration Costs relating to the Tribal Administration Cost Subaccount, other than investment earnings on the Tribal Administration Cost Subaccount, absent further order of the Court. If additional funds are required to fund this Tribal Administration Cost Subaccount, the Trustee shall confer with the United States to attempt to find an appropriate resolution to address any funding shortfall.

2.1.4 Tribal Advisory Council. In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and fund a Tribal Advisory Council. ~~to~~ The Tribal Advisory Council shall: (i) advise the technical assistance provider ~~in evaluating tribal funding requests for Eligible Mitigation Actions;~~ (ii) ~~advise the technical assistance provider~~ on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and (iii) provide a forum for Indian Tribes to ~~discuss issues~~ raise general questions relating to the ~~administration of the~~ Indian Tribe Trust Agreement. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members. The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider's summary report may be submitted to the Trustee as a part of its regular semi-annual report to the Trustee pursuant to subparagraph 2.1.1.5. The Trustee shall set aside \$30,000 of the Tribal Administrative Cost Subaccount into a separate subaccount, the Tribal Advisory Council Subaccount, for record keeping purposes only, to fund a Tribal Advisory Council for the purposes listed in this subparagraph. The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.3, 2.1.1.4, and 2.1.1.5 with respect to funding requests and reporting obligations for the Tribal Advisory Council. The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle. Upon the termination or completion of services by the Tribal Advisory Council, any unused funds shall be returned by the Institute for Tribal Environmental Professionals to the Indian Tribe Trust and added back to the Tribal Administration Cost Subaccount.

2.1.5 Tax Payment Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to

Paragraph 2.1, the Trustee shall deduct an amount equal to the estimated taxes owed on earnings of the Trust Funds while on deposit in the Court Registry that have been allocated to the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1. The amount of the deduction shall be based on applicable income tax withholding and reporting requirements, and consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. Such amount shall be deposited into a dedicated, non-interest bearing account (“Tax Payment Subaccount”). In addition, prior to the allocation of any investment income pursuant to subparagraph 3.2.3, the Trustee shall deduct an amount equal to the estimated taxes owed on such earnings and deposit that sum into the Tax Payment Subaccount. The amounts in this Tax Payment Subaccount shall be used for the express purpose of paying all applicable taxes with respect to the Indian Tribe Mitigation Trust in a manner consistent with Paragraph 6.7. If at any time the funds on deposit in this Tax Payment Subaccount are insufficient to pay all Taxes then due and owing, the Trustee shall seek to resolve any dispute pursuant to the dispute resolution procedures of Paragraph 6.2.

2.2 Trust Limitations

2.2.1 No Consent Decree Party or Beneficiary, nor any of its components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Indian Tribe Mitigation Trust.

2.2.2 All Trust Assets shall be used solely for the purposes provided in the Consent Decree and this Indian Tribe Trust Agreement.

2.2.3 This Indian Tribe Mitigation Trust is irrevocable. The Defendants: (i) shall not retain any ownership or residual interest whatsoever with respect to any Trust Assets, including, but not limited to, the funds transferred by the Defendants to fund the Indian Tribe Trust pursuant to the terms of the Consent Decree, (ii) shall not have any liabilities or funding obligations with respect to the Indian Tribe Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree, and (iii) shall not have any liability or obligation to pay tax on any income or gains from any investments of Trust Assets. Nor shall the Defendants have any rights or role with respect to the management or operation of the Indian Tribe Trust, or the Trustee’s approval of requests for Eligible Mitigation Action funding.

2.2.4 Exculpation. Neither the Trustee and its officers, directors, and employees, the Investment Manager and its officers, directors, and employees, the Tax Professionals nor the Indian Tribe Mitigation Trust shall have any liability whatsoever to any person or party for any liability of the Defendants; provided, however, that the Indian Tribe Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Indian Tribe Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: Pursuant to Paragraph 15.e. of the First Partial Consent Decree, the Court appointed Wilmington Trust, N.A., as Trustee of the Environmental Mitigation Trust. Dkt. No. 3030 at 2. Wilmington Trust, N.A., not individually but in its representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such capacity to the Indian Tribe Mitigation Trust and for the benefit of the Beneficiaries.

3.0.1 Wilmington Trust, N.A. is acting in two separate and distinct roles under the Indian Tribe Mitigation Trust: (1) as the Trustee of the Indian Tribe Mitigation Trust; and (2) as the Investment Manager of the Trust Assets. These roles are subject to different standards of care. Wilmington Trust, N.A., acting as Trustee, is subject to the standard of care set forth in subparagraphs 3.1.1 and 3.5.2. In its role as Investment Manager, Wilmington Trust, N.A. is subject to the standard of care set forth in subparagraph 3.2.2.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this Indian Tribe Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Indian Tribe Mitigation Trust, which shall be exercised in an efficient and expeditious manner in furtherance of and in a manner consistent with the purposes of this Indian Tribe Trust Agreement and the Consent Decree. Subject to the limitations on liability set forth in subparagraph 3.5.2, the Trustee shall act in accordance with the current professional standards of care and with the diligence, skill, and care expected for the administration of such a Trust. The Trustee shall have only such duties, rights, powers, and privileges expressly set forth in the Consent Decree, this Indian Tribe Trust Agreement, and as otherwise provided by the Delaware Act. No implied duties (including fiduciary duties) shall be read into this Indian Tribe Trust against Wilmington Trust, N.A., acting as the Trustee.

3.1.2 Upon the Trust Effective Date, the powers of the Trustee shall include the following:

3.1.2.1 To receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of this Indian Tribe Trust Agreement or to engage a professional investment manager (“Investment Manager”) to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 for the benefit of the Beneficiaries. The Trustee appoints Wilmington Trust, N.A. as the Investment Manager for the Indian Tribe Mitigation Trust pursuant to an Investment Management Agreement entered into on the Trust Effective Date to manage the Trust Assets in accordance with Paragraph 3.2;

3.1.2.2 To establish and maintain a public-facing website onto which it will post all materials as required hereunder;

- 3.1.2.3 To establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries. Initially, the Trustee will use Intralinks to provide this method of communication. The Trust may change this method at any time but shall provide 30 Days' notice to the Beneficiaries in connection with any change;
- 3.1.2.4 To hold title to property in the name of the Trustee in its capacity as such;
- 3.1.2.5 To incur, and pay from the Tribal Administration Cost Subaccount, any and all customary and commercially reasonable charges and expenses upon or connected with the administration of this Indian Tribe Mitigation Trust in the discharge of its obligations hereunder, including 2% of Start-up Costs, 2% of Shared State and Indian Tribe Administration Costs, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement;
- 3.1.2.6 To engage and compensate professionals to assist the Trustee in accordance with this Indian Tribe Trust Agreement, including, but not limited to, legal, environmental, investment, accounting, tax, website, and third-party auditing professionals, or internet service providers, or insurance providers. Such third-party auditing professionals may be used by the Trustee to audit and/or review expenditures to verify that they comport with the requirements and limitations on use of Trust Funds, as set forth herein. The Trustee may initiate such an audit and/or review on its own initiative or in response to credible reports or suggestions that such review or audit is appropriate. The Trustee shall have an annual independent audit of the Trust's annual financial statements prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual independent audit of the Trust's annual financial statements and the requirement of a semi-annual independent review of the Trust's financial statement for any semi-annual period, starting in year seven or at an earlier time in order to preserve Trust Funds;
- 3.1.2.7 To engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust, and to take such actions as may be reasonably necessary to secure such ruling and to ensure that the Indian Tribe Mitigation Trust continues to comply with such ruling upon the advice of the Tax Professionals. The Trustee may engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS that investment income earned on the Trust Assets will be excludible from gross

income upon the advice of Tax Professionals that the pursuit of such a Private Letter Ruling is prudent;

- 3.1.2.8 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Indian Tribe Mitigation Trust, the Trust Assets, the Trustee and its officers, directors, and employees, Wilmington Trust, N.A., in its role as Investment Manager, and its officers, directors, and employees, and to cover Tax Professionals, if required, from any and all Claims that might be asserted against each;
- 3.1.2.9 To distribute Trust Assets for the purposes contemplated in this Indian Tribe Trust Agreement and the Consent Decree, including the allocation of funds to Beneficiaries for approved Eligible Mitigation Actions;
- 3.1.2.10 To file documents in Court on behalf of itself and the Indian Tribe Trust;
- 3.1.2.11 To make all necessary state and federal filings and to provide information as required by law;
- 3.1.2.12 To vote shares or other investments;
- 3.1.2.13 To open or maintain any additional bank accounts, or close bank accounts or open securities accounts as are necessary or appropriate to manage the Trust Assets;
- 3.1.2.14 To apply, as soon as practicable after the Trust Effective Date, for an employer identification number for the Indian Tribe Trust pursuant to IRS Form SS-4, and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4);
- 3.1.2.15 To deduct and withhold from allocation of investment earnings to the Beneficiaries under subparagraph 3.2.3 all Taxes that the Trustee may be required to deduct and withhold under any provision of tax law, and any allocation of investment income under subparagraph 3.2.3 to an Indian Tribe Trust subaccount shall be reduced to the extent such withheld amounts are remitted to the appropriate taxing authority;
- 3.1.2.16 To file on behalf of the Indian Tribe Trust all required Tax Returns, which shall be completed in consultation with Tax Professionals, ensure compliance with withholding and reporting requirements, and pay any and all Taxes, including estimated Taxes, due and owing with respect to the Indian Tribe Trust from amounts in the Tax Payment Subaccount pursuant to subparagraph 2.1.5; and

- 3.1.2.17 Subject to applicable requirements of this Indian Tribe Trust Agreement (including the limitations on liability set forth in subparagraph 3.5.2), the Consent Decree, and other applicable law, to effect all actions and execute and deliver all contracts, instruments, agreements, or other documents that may be necessary to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree, each in accordance with its duties and the current professional standards of care, and with the diligence, skill, and care expected for the administration of such a Trust for the benefit of the Indian Tribes.
- 3.1.2.18 Duty to Comply with Law. The Trustee shall not be required to take any action that would violate a law or regulation to which it is subject.
- 3.1.2.19 Relation-Back Election. If applicable, the Trustee and the Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the Indian Tribe Trust as coming into existence as a settlement fund as of the earliest possible date.

3.2 Investment of Trust Assets: The Trustee shall engage the Investment Manager to invest and reinvest the principal and income of the Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs.

3.2.1 Any investment income that is not reinvested shall be deposited into the Indian Tribe Trust Account for allocation among the Beneficiaries.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee or Investment Manager must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with like aims. The Investment Manager shall comply with all applicable laws and shall be held to a fiduciary standard of care with respect to the investment and reinvestment of the principal and income of Trust Assets; except that the right and power of the Investment Manager to invest and reinvest the Trust Assets shall be limited to: (i) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (ii) U.S. Treasury bills, bonds, and notes, including, but not limited to, long-term U.S. Treasury bills, bonds, and notes; (iii) repurchase agreements for U.S. Treasury bills, bonds, and notes; (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or (v) open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection. The Investment Manager shall maintain prudent diversification across instruments and specific issuers. The value of bonds of any single company and its affiliates owned by the Indian Tribe Trust directly rather than through a mutual fund shall not exceed

10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies. Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments made by the Investment Manager shall be made on the date of acquisition of any such investment or on the date of re-investment. The Investment Manager shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Investment Manager determines that any particular investment no longer meets the rating requirement, the Investment Manager shall substitute that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Investment Manager believes it is in the interest of the Indian Tribe Trust to do so. The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. This subparagraph 3.2.2 shall act as a standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash, which shall be invested in The Blackrock Fed Fund (CUSIP 09248U809). Except for actions or omissions of the Investment Manager that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, the Investment Manager and its officers, directors, or employees shall have no liability for any and all Claims.

3.2.3 **Allocation of Investment Income.** Any and all earnings, interest, and other investment income realized on the investment of the Trust Assets shall be allocated to each Indian Tribe Trust subaccount on the basis of the respective subaccount balances at the end of each month. Any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount shall be allocated to that administration subaccount on the basis of the administration subaccount balance at the end of each month.

3.2.4 Nothing in this Section shall be construed as authorizing the Trustee to cause the Indian Tribe Mitigation Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Assets or any portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Indian Tribe Mitigation Trust.

3.3 Accounting: The Trustee shall maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against the Indian Tribe Mitigation Trust. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles (“GAAP”). The United States, by and through EPA, and each Beneficiary, shall have the right upon 14 Days’ prior written notice to inspect such books and records, as well as all supporting documentation. Except as otherwise provided herein, the Trustee shall not be required to file any accounting or seek approval of the

Court with respect to the administration of the Indian Tribe Mitigation Trust, or as a condition for making any payment, allocation or distribution out of the Trust Assets.

3.3.1 Semiannual Reporting. Within 180 Days of the Trust Effective Date in the first year, and thereafter by February 15 (for the preceding six-month period of July 1 to December 31) and August 15 (for the preceding six-month period of January 1 to June 30) of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to Paragraph 6.8 hereof (each a “Financial Reporting Date”), the Trustee shall file with the Court and provide each known Beneficiary, the technical assistance provider, and the Defendants with:

- 3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Indian Tribe Trust (including applicable ratings on such investments); and (iii) including a cumulative and calendar year accounting of the amount the Trustee has paid out from the Indian Tribe Trust Account and all subaccounts to any recipient;
- 3.3.1.2 Regarding the Tribal Allocation Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) the initial allocation of Trust Assets in the Tribal Allocation Subaccount; (ii) any allocation adjustments pursuant to this Indian Tribe Trust Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) the remaining and projected amount in the Tribal Allocation Subaccount. Such accounting shall also include, for each Beneficiary, a balance statement and projected annual budget of disbursements taking into account those Eligible Mitigation Actions that have been approved as of the Financial Reporting Date;
- 3.3.1.3 Regarding the Tribal Administration Cost Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; and (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs;
- 3.3.1.4 For the Indian Tribe Trust Account and all subaccounts, including, but not limited to the Tribal Administration Cost Subaccount, balance statements and one-year projected annual budgets that itemize all assets, income, earnings, expenditures, allocations, and disbursements of Trust Assets by Indian Tribe Trust Account and each subaccount;
- 3.3.1.5 ~~Third party audited financial reports disclosing and certifying (1) financial statements for the semi-annual period ending June 30 of each year, accompanied by a review report thereon from an independent certified public accounting firm; (2) financial statements for the annual period ending December 31 of each year, accompanied by an audit opinion thereon from an independent certified public accounting firm; (3) all semi-annual and annual~~

period's financial statements shall include disclosure of the disposition of all Trust Assets from the ~~Trust Effective Date~~ previous year end date through the calendar quarter immediately preceding the Financial Reporting Date, specifically including and a supplemental schedule presenting a reconciliations of the Trustee's prior budget projections for Trust Administration Costs to actual performance for that period; and (4) the independent certified public accounting firm shall perform its review of the semi-annual financial statements and its audit of the annual financial statements in accordance with auditing standards generally accepted in the United States (i.e., audit standards issued by the Association of International Certified Professional Accountants ("AICPA")).

3.3.1.6 A description of any previously unreported action taken by the Indian Tribe Trust in performance of its duties which, as determined by the Trustee, counsel, accountants, or other professionals retained by the Trustee, affects the Indian Tribe Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Indian Tribe Trust Agreement and the Consent Decree during the previous year; and

3.3.1.8 On each Financial Reporting Date, the Trustee shall simultaneously publish on the Indian Tribe Trust's public-facing website all information required to be provided under Paragraph 3.3.

3.3.2 After the Termination Date, the Trustee intends to destroy all records retained pursuant to this Indian Tribe Trust Agreement. The Trustee shall notify the United States and the Defendants at least 90 Days prior to the destruction of the records. Upon request by the United States or the Defendants, the Trustee shall deliver any such records to EPA or the Defendants, respectively.

3.4 Limitation of the Trustee's Authority: The Trustee is not authorized to engage in any trade or business with respect to the Trust Assets or proceeds therefrom. This provision does not prevent Wilmington Trust, N.A. from acting as the Investment Manager.

3.5 Conditions of Trustee's Obligations: The Trustee accepts appointment as the Trustee subject to the following express terms and conditions:

3.5.1 No Bond. Notwithstanding any state or tribal law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

3.5.2 Limitation of Liability and Standard of Care for the Trustee. In no event shall the Trustee be held personally liable for any and all Claims asserted against the Trustee and/or the Indian Tribe Mitigation Trust except for actions or omissions of the Trustee that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Trustee. The Trustee shall not be held personally liable for

carrying out the express terms of this Indian Tribe Mitigation Trust or carrying out any directions from the Beneficiaries or the United States issued in accordance with this Indian Tribe Trust Agreement or in accordance with any Court Order entered in connection with or arising out of the Indian Tribe Mitigation Trust. The Trustee shall not be held personally liable for any failure or delay in the performance of its obligations hereunder arising from causes beyond the control of the Trustee (“Force Majeure”). The Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a final, non-appealable judgment of the Court determining fraud, negligence, or willful misconduct on the part of the Trustee in following such advice. The Trustee shall not be held liable for the negligence, fraud, or willful misconduct of any professional hired by it hereunder provided that the Trustee appointed and engaged the professional with due care. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a final, non-appealable judgment of the Court, the Trustee shall not be personally liable to persons seeking payment from or asserting any and all Claims against the Indian Tribe Mitigation Trust or the Trustee. The Trustee, which is a trustee of this Indian Tribe Trust that has been established under the Delaware Act, shall only be held to the standards of care set forth in this subparagraph 3.5.2; the standards of common law trust laws or the personal trust laws of any state shall not apply in any circumstances hereunder.

3.5.2.1 Limitation of Liability for Tax Professionals. In no event shall the Tax Professionals engaged by the Trustee to assist it with the administration of the Indian Tribe Mitigation Trust be held personally liable for any and all Claims asserted against them except for actions or omissions of the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Tax Professionals.

3.5.3 Indemnification. Except for actions or omissions of the Trustee, the Investment Manager, and the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee, the Investment Manager, or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification from the Trust Assets, solely as provided in this subparagraph 3.5.3, to hold them harmless against any and all Claims brought against any of them arising out of or in connection with the acceptance or administration of their duties under this Indian Tribe Mitigation Trust, including any and all Claims in connection with enforcing their rights hereunder and defending themselves against any and all Claims. In asserting any indemnification claim against Trust Assets pursuant to this subparagraph 3.5.3, the Trustee, the Investment Manager, and the Tax Professionals shall first seek to recover the amount by asserting a claim against the Trustee’s insurance policies purchased pursuant to subparagraph 3.1.2.8 to protect the Trustee, the Investment Manager, and the Tax Professionals hired hereunder against any and all Claims. With respect to any and all amounts that: (1) are not fully and timely paid to the Trustee, the Investment Manager, or the Tax Professionals pursuant to the insurance policies purchased pursuant to subparagraph

3.1.2.8, and (2) are not determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee or the Investment Manager or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification solely from the portion of Trust Assets in (a) the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and (b) the investment earnings on the Tribal Administration Cost Subaccount. Indemnification under this subparagraph 3.5.3 covers only the amounts not fully and timely paid or covered by insurance policies purchased pursuant to subparagraph 3.1.2.8. The Trustee, the Investment Manager, and the Tax Professionals shall reimburse the Indian Tribe Mitigation Trust for any amount advanced to them or paid from the Tribal Administration Cost Subaccount for any Claim if any proceeds are paid on such Claim from insurance policies purchased pursuant to subparagraph 3.1.2.8. If insurance payments are denied in whole or part, the Trustee shall confer with legal counsel and consider whether to affirmatively pursue such insurance payments including, without limitation, an insurance coverage suit arising out of a wrongful denial of coverage. For the avoidance of doubt, subparagraphs 3.5.2, 3.5.2.1, and 3.5.3 do not create for the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, and the Tax Professionals hired hereunder any express or implied right to indemnification from any Consent Decree Party for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or the Tax Professionals, and no Consent Decree Party shall be liable for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or Tax Professionals.

3.5.4 Reliance on Documentation. The Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries, including the Beneficiary Status Certification Form (Appendix D-3) the EMA Certification Form (Appendix D-4), the Designated Beneficiary's Participation Notice (Appendix D-6), and the Beneficiary's Election to Opt Out Form (Appendix D-7). The Trustee shall have no duty to monitor or supervise the use of Trust Funds paid in accordance with Beneficiary Eligible Mitigation Action Certification and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the technical assistance provider, including, without limitation, the technical assistance provider's report relating to EMA Certification Forms (Appendix D-4) that it has reviewed in each funding cycle pursuant to subparagraph 2.1.1.2, its annual budget pursuant to subparagraph 2.1.1.3, and its report relating to its services and expenditures pursuant to subparagraph 2.1.1.5.

3.5.5 Right to Demand Documentation. Notwithstanding anything else in this Indian Tribe Trust Agreement, in the administration of the Trust Assets, the Trustee shall have the right, but shall not be required, to demand from the relevant Beneficiary or the technical assistance provider before the disbursement of any cash or in respect of any action whatsoever within the purview of this Indian Tribe Mitigation Trust, any showings,

certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

3.5.6 Limitation on Consequential Damages. Unless the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have engaged in fraudulent or willful misconduct, the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall not have any right to recover, and the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals shall not be liable for, any special, indirect, punitive, or consequential loss or damages, of any kind whatsoever, against the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals. When the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have been negligent, any and all Claims by the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall be limited to direct damages.

3.5.7 No Consequential Damages. In no event shall the Trustee, the Investment Manager, the Tax Professionals, or the Indian Tribe Mitigation Trust be held responsible or liable for special, indirect, punitive, or consequential loss or damages of any kind whatsoever in connection with any and all Claims brought against them by any third party.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in Appendix D-1 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the administration of the Indian Tribe Trust, including payment of professionals hired in connection with the duties and responsibilities of the Indian Tribe Trust, payment of insurance premiums for policies purchased pursuant to subparagraph 3.1.2.8, payment of a deductible incurred under an insurance policy for the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals hired hereunder purchased pursuant to subparagraph 3.1.2.8 in cases in which the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals would be entitled to indemnification under subparagraph 3.5.3, any indemnification amounts as provided in accordance with subparagraph 3.5.3, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Indian Tribe Mitigation Trust, in accordance with the projected annual budgets for administration of the Indian Tribe Mitigation Trust required under subparagraph 3.3.1 hereof, and shall be entitled to pay itself from the Tribal Administration Cost Subaccount its initial fee and its annual administration fee as set forth in its fee letter dated as of the Trust Effective Date ("Trustee Fee Letter"). The Trustee shall provide a copy of the Trustee Fee Letter to each Beneficiary via the secure internet site established by the Trustee pursuant to subparagraph 3.1.2.3. Consistent with the weighted average allocation rates set forth in Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount 2% of Start-up Costs and 2% of Shared State and Indian Tribe Administration Costs. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the specific

allocation established for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), plus any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount. The Trustee shall not use the Tribal Administration Cost Subaccount to pay: (1) the fees and expenses of the Investment Manager; or (2) any and all Taxes due and owing with respect to the Indian Tribe Trust. In accordance with the terms of the Investment Management Agreement, the Investment Manager's fees and expenses shall be deducted directly from the investment earnings on the Trust Assets, and not from the corpus of the Trust Assets. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established in subparagraph 2.1.5. The Trustee shall include in its semiannual reporting, and post on its public-facing website, all Trust Administration Costs (including the costs and descriptions of the Trustee's services rendered on behalf of the Indian Tribe Trust) at least 15 Days prior to the payment of any such expense; provided, however, that the requirement to post all Trust Administrative Costs at least 15 Days prior to payment shall first take effect when the website is established and ready for use, and shall not initially apply to Start-up Costs and to Shared State and Indian Tribe Administration Costs. In addition, any and all payments relating to Taxes are not subject to the 15-Day posting requirement on the public-facing website. After the Tribal Administration Cost Subaccount is funded pursuant to subparagraph 2.1.3.2, the Trustee, after receipt of invoices from any third-party service providers, shall pay as promptly as practical any and all fees, costs, and expenses incurred by the Trustee to establish the Indian Tribe Mitigation Trust including, but not limited to: (1) the invoices of third-party service providers (e.g., legal, accounting, website developer, and hosting provider); (2) fees, costs, and expenses necessary to commence the operations of the Indian Tribe Trust (e.g., Intralinks, Pacer, and insurance premiums); and (3) the Trustee's acceptance fee and first quarter portion of the Trustee's annual fee for the first year. All Trust Administration Costs that are paid prior to the establishment of the website shall be posted on the website as promptly as practicable after the website is established. Such information shall remain available on the website until the Termination Date.

3.7 Termination, Resignation, and Removal of the Trustee

3.7.1 Termination of Trustee. The rights, powers, duties, and obligations of the Trustee to the Indian Tribe Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. The Trustee may commence the resignation process at any time by providing 90 Days' notice to the United States, the Defendants, and the Beneficiaries. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the First Partial Consent Decree; and (ii) order of the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the appointment of a successor trustee or as otherwise ordered by the Court, the Trustee shall transfer all Indian Tribe Trust records to the successor trustee, and shall take all actions necessary to assign, transfer, and pay over to the successor trustee control of all Trust Assets (including the public website maintained by the Trustee). In the event that the Trustee ceases to exist or ceases to operate its corporate trust business, the Court may, upon motion by the United States or any Beneficiary, appoint an interim Trustee until such time as a successor trustee is appointed in

accordance with the procedures set forth in the First Partial Consent Decree. Any successor Trustee appointed hereunder shall file an amendment to the Certificate of Trust as required by the Delaware Act.

IV. INDIAN TRIBE MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each Indian Tribe may elect to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. For the first funding cycle, an Indian Tribe was required to file its Beneficiary Status Certification Form (Appendix D-3) at the time it filed its first funding request, including any request seeking DERA funds, which was due 90 Days after the Trust Effective Date. In order to qualify as a designated Beneficiary for funding cycles after the first funding cycle, any Indian Tribe, which has not yet been designated as a Beneficiary by the Trustee, shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court by the following deadlines: for the second funding cycle -- by December 3, 2018; for the third funding cycle -- by December 3, 2019; for the fourth and any subsequent funding cycle -- by December 3, 2020. At the time of filing the Beneficiary Status Certification Form (Appendix D-3) with the Court, each Indian Tribe shall also, by the same deadlines, concurrently deliver a copy of the Beneficiary Status Certification Form (Appendix D-3) to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Each Indian Tribe that timely files such certifications shall be a "Certifying Entity." The Trustee shall be responsible for ensuring that the form of each certification complies with the requirements hereof prior to deeming any Certifying Entity to be a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1.

4.0.1 Notice of Objection. If the United States determines that a Beneficiary Status Certification Form (Appendix D-3) filed by any Certifying Entity fails to comply with the requirements of this Section, the United States may file with the Court a notice of objection within 30 Days after the deadline for each funding cycle set in Paragraph 4.0 for a Certifying Entity to file its Beneficiary Status Certification Form (Appendix D-3) with the Court. Such notice shall explain the basis of objection with specificity. Any such objections shall be resolved according to the procedures set forth in Paragraph 6.2.

4.0.2 Notice of Beneficiary Designation. Regarding the determination of Beneficiary status for Indian Tribes pursuant to subparagraphs 5.0.5 and 5.0.5.1, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity a Notice of Beneficiary Designation according to the following schedule: for the first funding cycle -- not later than 120 Days after the Trust Effective Date; for the second funding cycle -- by February 4, 2019; for the third funding cycle -- by February 3, 2020; for the fourth funding cycle and any subsequent funding cycle -- by February 3, 2021. The Trustee's Notice of Beneficiary Designation shall indicate:

4.0.2.1 Which Certifying Entities filed certifications as to which no notice of objection has been filed. Upon the filing of this Notice of Beneficiary Designation, each such Certifying Entity shall be deemed a "Beneficiary" hereunder; and

4.0.2.2 Intentionally Reserved.

4.0.2.3 Which Certifying Entities timely filed certifications as to which a notice of objection has been filed pursuant to subparagraph 4.0.1, together with an explanation of the status of any such objection. Each such Certifying Entity shall be a "Pending Beneficiary." Upon final resolution of each objection, the Pending Beneficiary shall either be deemed a Beneficiary or not qualified as a Beneficiary under this Indian Tribe Trust Agreement.

4.0.2.4 Once a Certifying Entity has been deemed a Beneficiary hereunder, it remains a Beneficiary for all future funding cycles, and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

4.1 Intentionally Reserved.

4.2 Required Certifications in Appendix D-3 Form

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Beneficiary Status Certification Form (Appendix D-3) must include a designation of lead agency, certified by the Office of the Governor (or the analogous chief executive) of the Indian Tribe on whose behalf the Beneficiary Status Certification Form is submitted, indicating which agency, department, office, or division will have the delegated authority to act on behalf of and legally bind such Indian Tribe. The Beneficiary Status Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Beneficiary Status Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this Indian Tribe Trust Agreement, including the allocations of Trust Assets provided hereunder, and to be subject to the jurisdiction of the Court for all matters concerning the interpretation or performance of, or any disputes arising under, this Indian Tribe Trust Agreement. The Certifying Entity's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

4.2.2 Consent to Trustee Authority. Each Beneficiary Status Certification Form (Appendix D-3) must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Indian Tribe Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds hereunder; and (ii) to implement this Indian Tribe Trust Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Beneficiary Status Certification Form (Appendix D-3) must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; and (ii) prior to requesting any funds hereunder, the Certifying Entity has obtained full legal authority to receive and/or direct payments of such

funds. If the Certifying Entity fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary pursuant to subparagraphs 4.0.2.1 and 5.0.5.1 until it has obtained such legal authority.

4.2.4 Certification of Legal Compliance. Each Beneficiary Status Certification Form (Appendix D-3) must include a certification and agreement that, in connection with all actions related to this Indian Tribe Trust, the Certifying Entity has followed and will follow all applicable law and that such Certifying Entity will assume full responsibility for its decisions in that regard.

4.2.5 Certification of Eligible Mitigation Action Accounts. Each Beneficiary Status Certification Form (Appendix D-3) shall include a certification by the Certifying Entity that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trustee for credit to the Tribal Allocation Subaccount.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Beneficiary Status Certification Form (Appendix D-3) shall include an express waiver by the Certifying Entity, on behalf of itself and all of its agencies, departments, offices, and divisions, in favor of the parties to the Consent Decree (including the Defendants) of all claims for injunctive relief to redress environmental injury caused by the Subject Vehicles, whether based on the environmental or common law within its jurisdiction. Such waiver shall be binding on all agencies, departments, offices, and divisions of such Beneficiary asserting, purporting to assert, or capable of asserting such claims. The waiver need not waive, and the Certifying Entities may expressly reserve, their rights, if any, to seek fines or penalties. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

4.2.7 Publicly Available Information. Each Beneficiary Status Certification Form (Appendix D-3) must include a certification by the Certifying Entity that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Certifying Entity, each until the Termination Date, unless the laws of the Certifying Entity require a longer record retention period. This certification shall include an explanation of the procedures by which the records may be accessed. These procedures shall be designed to support access and limit the burden for the general public. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

4.2.8 Notice of Availability of Mitigation Action Funds. Each Beneficiary Status Certification Form (Appendix D-3) must certify that, not later than 30 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, the Certifying Entity will provide a copy of this Indian Tribe Trust Agreement with Appendices to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal Agency that has custody, control, or management of land within or contiguous to the territorial boundaries of the Certifying Entity and has by then notified the Certifying Entity

of its interest hereunder, explaining that the Certifying Entity may request Eligible Mitigation Action funds for use on lands within that Federal Agency's custody, control, or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Certifying Entity will review, consider, and make a written determination upon each such request. For the U.S. Department of the Interior and the U.S. Department of Agriculture, Beneficiaries may provide notice as required by this subparagraph to the following:

Department of the Interior:

National Park Service, Air Resources Division
VW Settlement
P.O. Box 25287
Denver, CO 80225-0287
Or via email to: vwsettlement@nps.gov.

Tim Allen or other designated representative
U.S Fish and Wildlife Service
National Wildlife Refuge System
Branch of Air Quality
Re: VW Settlement
7333 W. Jefferson Ave., Suite 375
Lakewood, CO 80235-2017
Or via email to: VW_Settlement@fws.gov

Department of Agriculture:

Linda Geiser or other designated representative
National Air Program Manager
lgeiser@fs.fed.us
(202) 756-0068

Bret Anderson or other designated representative
National Air Modeling Coordinator
baanderson02@fs.fed.us
(970) 295-5981

4.2.9 Registration of Subject Vehicles. Each Beneficiary Status Certification Form (Appendix D-3) must state, for the benefit of the parties to the Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that the Certifying Entity:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or

- ii. Emissions resulting from such a defeat device or AECD; or
- iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or Emissions Compliant Recall based solely on:

- i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
- ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the First Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
- iii. Other emissions-related vehicle characteristics that result from the modification; or
- iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Certifying Entity by the Defendants.

(d) Notwithstanding the foregoing, a Certifying Entity may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Certifying Entity's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act, 42 U.S.C. §§ 7543, 7507, and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. ALLOCATION OF INDIAN TRIBE MITIGATION TRUST ASSETS

5.0 Intentionally Reserved.

5.0.1 Intentionally Reserved.

5.0.2 Intentionally Reserved.

5.0.3 Allocation of Appendix A Mitigation Trust Payments. Any “National Mitigation Trust Payment” made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) of the First Partial Consent Decree or Section X (Recall Rate) of Appendix A (Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant Recall Program) of the Second Partial Consent Decree shall be allocated in accordance with Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.4 Allocation of Appendix B Mitigation Trust Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) of the First Partial Consent Decree or Appendix B (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject Vehicles) of the Second Partial Consent Decree or any Consent Decree provisions related thereto shall be allocated in accordance with Appendix D-1B (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.5 Allocation of Tribal Allocation Subaccount.

5.0.5.1 Trustee’s Notices. The Trustee shall post a notice on the Indian Tribe Mitigation Trust’s public-facing website according to the following schedule:

(a) First Funding Cycle. Within 30 Days after the Trust Effective Date, the Trustee was required to post notice: (i) that each Indian Tribe may seek to become a Beneficiary hereunder by filing with the Court, at the time it submits its first funding request, a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2; (ii) that each Indian Tribe may submit to the Trustee an EMA Certification Form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by 90 Days after the Trust Effective Date; and (iii) stating the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying Indian Tribe, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3. In accordance with this schedule, the Trustee filed a Notice of Beneficiary Designation with the Court on January 29, 2018, which designated 29 Indian Tribes as Beneficiaries pursuant to the terms of the Indian Tribe Trust Agreement. The Notice of Beneficiary Designation stated that two Tribes of the 29 designated Beneficiaries did not file a Beneficiary Status Certification Form (Appendix D-3) and an EMA Certification Form (Appendix D-4) by the deadline for the first funding cycle, and are not eligible to participate in the first funding cycle.¹ In addition, one Tribe of the 29 designated Beneficiaries applied for the DERA Option described in

¹ These two Tribes are the Southern Ute Indian Tribe and the Swinomish Indian Tribal Community.

Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), did not receive a DERA Award from EPA, and is not eligible to participate in the first funding cycle.² As provided in subparagraph 4.0.2.4, once a Certifying Entity has been deemed a Beneficiary, it remains a Beneficiary for all future funding cycles and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

(b) Other Funding Cycles. For funding cycles after the first funding cycle, the Trustee shall post a notice on the Indian Tribe Trust's public-facing website by October 3, 2018 (for the second funding cycle), October 3, 2019 (for the third funding cycle), and October 2, 2020 (for the fourth funding cycle and any subsequent funding cycles) stating that: (i) each Indian Tribe, which has not yet been designated a Beneficiary by the Trustee, may seek to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2 by the following deadlines: for the second funding cycle -- December 3, 2018; for the third funding cycle -- December 3, 2019; and for the fourth funding cycle and any subsequent funding cycles -- December 3, 2020; and (ii) the Trustee will determine and post a Notice of Beneficiary Designation of each certifying Indian Tribe by the deadline set in subparagraph 4.0.2, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3.

5.0.5.2 Four Funding Cycles. The assets in the Tribal Allocation Subaccount shall be committed to Beneficiaries over four funding cycles as follows: (i) no more than one-sixth of total remaining assets in the Tribal Allocation Subaccount may be committed during the first funding cycle; (ii) no more than one-third of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one-half of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; and (iv) the remaining ~~funds~~assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle. In the event uncommitted funds remain in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the fourth funding cycle, such funds may be made available for a fifth funding cycle in accordance with the procedure in subparagraphs 5.0.5.3.4 through 5.0.5.3.5. For purposes of this subparagraph 5.0.5.2, "remaining assets" shall mean the amount on deposit in the Tribal Allocation Subaccount on the following dates: (i) December 31, 2017 for the first funding cycle; (ii) December 31, 2018 for the second funding cycle; (iii) December 31, 2019 for the third

² This Tribe is the San Manuel Band of Mission Indians.

funding cycle; and (iv) December 31, 2020 for the fourth funding cycle; and ~~(v)~~ “uncommitted funds” shall mean the amount on deposit in the Tribal Allocation Subaccount on December 31, 2021 for the fifth funding cycle (if it occurs).

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5.0.5.3 In order to ensure an equitable allocation of funds in the Tribal Allocation Subaccount among Beneficiaries to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, the Trustee shall apply the allocation method set forth below in each funding cycle.

5.0.5.3.1 Group Division Based on 2010 United States Census Table PCT4. The 2010 United States Census Table PCT4 shall provide the only population statistics used for the Indian Tribe Trust Agreement as provided herein, and was used to compile the Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas (Appendix D-8) (“Alignment Table”). For the avoidance of doubt, the population statistics in the Alignment Table shall not be updated or revised for the life of the Indian Tribe Trust Agreement. Based on the 2010 United States Census Table PCT4 and application of a Jenks Grouping algorithm ranking population based on statistical analysis, the Indian Tribes have been divided into three Groups: (1) Group One with a population range of 0 to 16,906; (2) Group Two with a population range of 16,907 to 47,649; and (3) Group Three with a population of 47,650 and above. Group One consists of 558 Tribes, which represent 51.52 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; Group Two consists of 6 Tribes, which represent 10.61 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; and Group Three consists of 4 Tribes, which represent 37.87 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes. This categorization, which is reflected in the Alignment Table (Appendix D-8), shall form the basis for part of the allocation (i.e., the pro rata population-based allocation) in each funding cycle. These three Groups shall not be adjusted except as specifically set forth in the Alignment Table (Appendix D-8) with respect to any new federally recognized Indian Tribes. If any new Indian Tribe is recognized by the United States, in order to participate as a Beneficiary in the Indian Tribe Trust, that Indian Tribe shall file with the Court a Beneficiary Status Certification Form (Appendix D-3), and concurrently deliver to the Trustee a Beneficiary Status Certification Form (Appendix D-3) together with official documentation of such federal recognition as an Indian Tribe by the deadlines set forth in Paragraph 4.0 for the respective funding cycle. For purposes of this Indian Tribe Trust, all new federally recognized Indian

Tribes shall be deemed to be members of Group One with a zero population for all funding cycles.

5.0.5.3.2 First Funding Cycle. Twenty-six Indian Tribes, which were designated as Beneficiaries and submitted an approvable funding request by the filing deadline for the first funding cycle, are eligible to participate in the first funding cycle. Within 10 Business Days after the Trust Modification Effective Date, the Trustee shall implement the steps below for the first funding cycle:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the first funding cycle equally among the 26 Beneficiaries participating in the first funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the first funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups (Group One, Group Two, and Group Three), the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Funding Limit. The Trustee shall limit the allocation of funding for a Beneficiary to no more than the amount that the Beneficiary requested in its original EMA Certification Form (Appendix D-4). The Trustee shall reallocate any "overage" among the Beneficiaries in the first funding cycle that did not -- after application of Steps 1 and 2 -- receive the full amount of funding that the Beneficiary had requested in its original EMA Certification Form (Appendix D-4) (the "Remaining Beneficiaries"). This reallocation of the overage shall be based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.³ The population for each Indian Tribe shall be determined in accordance with the population statistics in the 2010 United States Census Table PCT4 as set forth in the Alignment Table (Appendix D-8).

³ For example, assume a Beneficiary requested funding of \$200,000 for the first funding cycle, but application of Steps 1 and 2 would result in a projected allocation of \$350,000 for that Beneficiary. The "overage" of \$150,000 would be reallocated among the Remaining Beneficiaries based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.

Step 4: Notice. Within ten Business Days after applying the allocation rules in Steps 1 through 3, the Trustee shall transmit notice to each of the 26 Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee a revised EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the first funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit a revised EMA Certification Form (Appendix D-4), that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. The Beneficiary's revised EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the first funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the first funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.3 Second through Fourth Funding Cycles. Within 5 Business Days after filing a Notice of Beneficiary Designation pursuant to subparagraph 4.0.2 for the second through fourth funding cycles, the Trustee shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks stating that any Beneficiary that would like to participate in the respective funding cycle shall submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6) by the following deadlines: for the second funding cycle -- March 1, 2019; for the third funding cycle -- March 2, 2020; for the fourth funding cycle -- March 1, 2021. Based on its receipt of timely-filed Designated Beneficiary's Participation Notices (Appendix D-6), the Trustee shall determine the number of participating Beneficiaries for each respective funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of

the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses and describes five "Exception Variants" that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in a given funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after the receipt of Designated Beneficiary's Participation Notices (Appendix D-6) that were timely filed by the deadline for each funding cycle, the Trustee shall apply the allocation rules in Steps 1, 2, and 3 in each funding cycle, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

After the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7) by the following deadlines: May 10, 2019 (for the second funding cycle); May 11, 2020 (for the third funding cycle), and May 10, 2021 (for the fourth funding cycle). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in each funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in that funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.4 Trustee's Accounting. By August 12, 2021, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously designated a Beneficiary hereunder, and publish on its public-facing website, an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs for the Tribal Allocation Subaccount. The difference between these two amounts shall be referred to as the "Tribal Subaccounts Remainder Balance." After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by September 13, 2021, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.

5.0.5.3.5 Fifth Funding Cycle. In accordance with the procedures set forth in subparagraph 5.0.5.3.4, the Trustee may provide notice to the Beneficiaries via Intralinks that the Tribal Subaccounts Remainder Balance is available for a fifth funding cycle. If there are sufficient funds for the fifth funding cycle, by the funding request deadline of December 1, 2021, any Indian Tribe that has been deemed a Beneficiary hereunder and would like to participate in the fifth funding cycle may submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6). Based on its receipt of timely-filed Designated Beneficiary's Participation Notices, the Trustee shall determine the number of participating Beneficiaries for the fifth funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the fifth funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the fifth funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all

participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses five Exception Variants that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in the fifth funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ~~ten~~fifteen Business Days after December ~~10~~31, 2021, the Trustee shall apply the allocation rules in Steps 1, 2, and 3, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the fifth funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the fifth funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.4 Any Beneficiary may use any share of its allocation for Eligible Mitigation Projects on Indian Land or in areas that are not Indian Land.

5.1 Eligible Mitigation Actions and Expenditures: The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures).

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding by filing with the Trustee an EMA Certification Form (Appendix D-4), containing each of the certifications required by subparagraphs 5.2.2 through 5.2.13, as applicable. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 Intentionally Reserved.

5.2.2 A detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits;

5.2.3 An estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;

5.2.4 A project management plan for the proposed Eligible Mitigation Action, including a detailed budget and an implementation and expenditure timeline;

5.2.5 A certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable;

5.2.6 For each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors;

5.2.7 A detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action, including, but not limited to:

5.2.7.1 Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law; and

5.2.7.2 A commitment by the Beneficiary to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together with an explanation of the procedures by which the Beneficiary shall make such documentation publicly available;

5.2.8 A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;

5.2.9 A description of how the Beneficiary complied with subparagraph 4.2.8;

5.2.10 If applicable, a description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and

5.2.11 A detailed plan for reporting on Eligible Mitigation Action implementation.

5.2.12 DERA Option. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may use its DERA proposal as support for its funding request for those Eligible Mitigation Actions funded through the DERA Option. In order to qualify for funding for the DERA Option under Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the Beneficiary must deliver a copy of an EPA DERA awardselection letter to the Trustee by the deadline to timely submit an EMA Certification Form (Appendix D-4) for a particular funding cycle pursuant to either subparagraph 5.0.5.3.3 or subparagraph 5.0.5.3.5.

5.2.13 Joint Application. After the requirements of subparagraph 5.0.5 have been satisfied and the Trustee has made its allocation determination of the amount of funding available for each participating Beneficiary in a funding cycle, two or more participating Beneficiaries may submit a joint request to fund an Eligible Mitigation Action using their combined allocation. In order to submit a Joint Application, each participating Beneficiary must comply with all requirements individually as set forth herein. Upon receipt of the Trustee's allocation determination of available funding pursuant to Step 4 of subparagraphs 5.0.5.3.2, 5.0.5.3.3 or 5.0.5.3.5, each Indian Tribe interested in pursuing a joint request to fund an Eligible Mitigation Action shall complete an individual EMA Certification Form (Appendix D-4) that: (1) cross-references the other interested Indian Tribe's EMA Certification Form (Appendix D-4); (2) makes all the required certifications on behalf of each Indian Tribe individually; and (3) explains how the two individually allocated amounts will be used to jointly fund the Eligible Mitigation Action in that funding cycle. Both individual EMA Certification Forms (Appendix D-4) must be approved in accordance with subparagraph 5.2.16 before any disbursement of funds will be made by the Trustee.

5.2.14 Publication of Funding Requests. The Trustee shall post on the Indian Tribe Trust's public-facing website a copy of each approved EMA Certification Forms (Appendix D-4) and a list of each Beneficiary that filed a Beneficiary's Election to Opt Out Form (Appendix D-7) for each funding cycle 15 Days after the distribution of funds for each funding cycle.

5.2.15 Reliance on Form. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any EMA Certification Form (Appendix D-4) reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Indian Tribe Trust Agreement and its Appendices. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information according to the following schedule: for the

first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if ~~a Beneficiary submits the Trustee requests a modified~~ modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee's request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary. ~~the deadline for the Trustee shall be 30 Days after the last submission of additional information by the Beneficiary.~~ A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures). ~~The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt.~~ Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form). The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

5.2.16.1 Disbursement of Funds. Each Beneficiary must complete all required documentation for the Trustee relating to incumbency and its security procedures prior to receiving any funds. Provided these conditions have been met by the Beneficiary, the Trustee shall begin disbursing funds within 15 Days of approval of an Eligible Mitigation Action funding request according to the written instructions and schedule provided by the Beneficiary, unless such date is not a Business Day and then the payment shall be made on the next succeeding Business Day.

5.2.16.2 Publication of Allocated Funds. Within 15 Days after the distribution of funds to Beneficiaries in each funding cycle, the Trustee shall post on the Indian Tribe Trust's public-facing website a listing of the amount received by each Beneficiary for each funding cycle.

5.2.17 Unused Eligible Mitigation Action Funds. Upon the termination or completion of any Eligible Mitigation Action, any unused Eligible Mitigation Action funds shall be returned to the Indian Tribe Mitigation Trust and added back to the Tribal Allocation Subaccount.

5.3 Beneficiary Reporting Obligations: For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than

January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to the Trustee a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action. Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this Paragraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

5.4 Supplemental Funding for Eligible Beneficiaries and Final Disposition of Trust Assets

5.4.1 Intentionally Reserved.

5.4.2 Intentionally Reserved.

5.4.3 Intentionally Reserved.

5.4.4 Intentionally Reserved.

5.4.5 Final Disposition of Indian Tribe Trust Assets. Not later than October 2, 2024, the seventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the seventh anniversary of the Trust Effective Date, any Trust Assets held in the Indian Tribe Trust Account or any subaccount (including, but not limited to, the Tribal Allocation Subaccount and the Tribal Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the Indian Tribe Trust to fund Eligible Mitigation Actions administered by Federal Agencies that have custody, control, or management of land in the United States that is impacted by excess NOx emissions (including, but not limited to, Clean Air Act Class I and II areas) and that have the legal authority to accept such funds, in accordance with instructions to be provided by the United States. If no such Federal Agencies exist, the United States will file a motion, with notice to the Defendants and the Beneficiaries, requesting the Court to order that any Trust Assets held in the Indian Tribe Trust Account (or any subaccount thereof) be distributed either to a governmental unit or to another trust, the income of which is excluded from gross income under the provisions of Internal Revenue Code Section 115, 26 U.S.C. § 115.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Indian Tribe Trust: In accordance with subparagraph 3.1.2.3, the Trustee shall establish and maintain a secure method of internet-based communications, initially Intralinks, for the use of the Trustee and the Beneficiaries that will: (1) enable each Beneficiary to deliver the required documentation under this Indian Tribe Trust Agreement in an electronic format; (2) enable secure communications between the Trustee and each Beneficiary; and (3) provide each Beneficiary with access to its own document base. In addition, each Beneficiary will have the ability to view ~~its own the~~ balance in ~~the Tribal Allocation its individual s~~ Subaccount ~~via the Wilmington Trust Online Portfolio product or a similar product then in use in the Trustee's~~ monthly statement in the Intralinks General Information folder. Any notices required to be provided by the Trustee to the Beneficiaries hereunder shall be deemed to have been properly and sufficiently provided hereunder if the Trustee posts such notice on Intralinks or any successor secure method of internet-based communications in use by the Trustee at that time.

6.0.1 Addresses for Delivery of Physical Copies of Documentation and Notices.

Indian Tribe Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe
Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611

Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

Technical Assistance Provider:

Institute for Tribal Environmental Professionals
Attn: Executive Director
Northern Arizona University
P.O. Box 15004
Flagstaff, AZ 86011-5004

Defendants:

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Audi AG by mail:

Audi AG
Auto-Union-Strasse 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America, Inc. by mail:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America Chattanooga Operations, LLC by mail:

Volkswagen Group of America Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1
D-70435 Stuttgart
Attention: GR/Rechtsabteilung/General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to: offsecy@porsche.us

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Granta Nakayama
Cari Dawson

giuffrar@sullcrom.com
nelless@sullcrom.com
gnakayama@kslaw.com
cari.dawson@alston.com

As to one or more of the Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004

Granta Nakayama
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

Cari Dawson
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

6.1 Jurisdiction: The U.S. District Court for the Northern District of California shall be the sole and exclusive forum for the purposes of enforcing this Indian Tribe Mitigation Trust and

resolving disputes hereunder, including the obligations of the Trustee to perform its obligations hereunder, and each of the Consent Decree Parties, the Indian Tribe Mitigation Trust, the Trustee, and each Beneficiary, expressly consents to such jurisdiction.

6.2 Dispute Resolution: Unless otherwise expressly provided for herein, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve any dispute between or among the Indian Tribes, the Consent Decree Parties, and the Trustee arising under or with respect to this Indian Tribe Trust Agreement. The United States is a necessary party to any Dispute Resolution process under this Indian Tribe Trust.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Indian Tribe Trust Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the disputing party sends to the counterparty a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the disputing parties cannot resolve the dispute by informal negotiations, then the disputing party may invoke formal dispute resolution procedures as set forth below.

6.2.2 Formal Dispute Resolution. The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the disputing party's position and any supporting documentation and legal authorities relied upon by the disputing party. The counterparty shall serve its Statement of Position within 30 Days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis, or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing parties are unable to consensually resolve the dispute within 30 Days after the counterparty serves its Statement of Position on the disputing party, the disputing party may file with the Court a motion for judicial review of the dispute in accordance with the following subparagraph.

6.2.3 Judicial Review. The disputing party may seek judicial review of the dispute by filing with the Court and serving on the counterparty and the United States, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation, and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Indian Tribe Trust. The counterparty shall respond to the motion within the time period allowed by the Local Rules of the Court, and the disputing party may file a reply memorandum, to the extent permitted by the Local Rules.

6.3 Choice of Law: The validity, interpretation, and performance of this Indian Tribe Mitigation Trust shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. The duties, rights, protections, and immunities of the Trustee, as a trustee of a statutory trust under the Delaware Act, shall be governed by the laws of the State of Delaware and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. This Indian Tribe Trust Agreement shall not be subject to any provisions of the Uniform Trust Code as adopted by any State, now or in the future. This Indian Tribe Trust Agreement shall be interpreted in a manner that is consistent with the Consent Decree, provided, however, that in the event of a conflict between the Consent Decree and this Indian Tribe Trust Agreement, this Indian Tribe Trust Agreement shall control.

6.4 Waiver of Jury Trial: Each party hereto and each Beneficiary hereof hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Indian Tribe Trust.

6.5 Modification: Material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Indian Tribe Mitigation Trust. Any modification of this Indian Tribe Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the Indian Tribe Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form) may be made upon written agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement among the United States, the Trustee, and the technical assistance provider, as necessary to enable the Trustee and the technical assistance to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. To the extent the consent of the Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Defendants, no modification shall: (i) require the Defendants to make any payments to the Indian Tribe Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the Indian Tribe Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Indian Tribe Mitigation Trust, whether material or minor, before such modification shall become effective; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

6.6 Severability: If any provision of this Indian Tribe Trust Agreement or application thereof to any person or circumstance shall be finally determined by the Court to be invalid or

unenforceable to any extent, the remainder of this Indian Tribe Trust Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Indian Tribe Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

6.7 Taxes: The Indian Tribe Mitigation Trust is intended to be a qualified settlement fund (“QSF”) pursuant to Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. The Trustee is intended to be the Indian Tribe Trust’s “administrator,” within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The Trustee shall use its best efforts to submit, within six months after the Trust Effective Date, an application and all necessary supporting documentation to the IRS to obtain a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust. Within ten Days after any application has been made to the IRS, the Trustee shall provide a copy of the application and accompanying documentation to the United States (pursuant to subparagraph 6.0.1) and to the known Beneficiaries (pursuant to the secure internet-based communication in Paragraph 6.0). Within seven Days after receipt of any IRS Private Letter Ruling, the Trustee shall provide a copy to the United States (pursuant to subparagraph 6.0.1) and the known Beneficiaries (pursuant to the secure internet-based communication established in Paragraph 6.0). The Trustee shall be responsible for filing all required Tax Returns, ensuring compliance with income tax withholding and reporting requirements, and paying applicable Taxes with respect to the Indian Tribe Trust in a manner consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established pursuant to subparagraph 2.1.5. The Defendants shall provide to the Trustee and the IRS the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Settling Defendants make a transfer to the Indian Tribe Trust.

6.8 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, final reports have been delivered pursuant to Paragraph 3.3 and subparagraph 3.3.1, and notice regarding retained documents has been provided pursuant to subparagraph 3.3.2, the Trustee may file a motion with the Court requesting an order to begin the process under the Delaware Act to terminate this Indian Tribe Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. After the Court approves the motion to terminate, the Trustee shall begin the dissolution and winding up processes under the Delaware Act. On the date that the Trustee completes all the statutory requirements under the Delaware Act and files a certificate of cancellation, this Indian Tribe Trust shall terminate (the “Termination Date”).

6.9 Appendices: The following appendices are attached to and part of the Indian Tribe Trust Agreement:

Appendix D-1 - Initial Allocation

Appendix D-1A - Initial 3.0 Liter Allocation

Appendix D-1B - Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures
Appendix D-3 - Certification for Beneficiary Status under Environmental Mitigation Trust Agreement
Appendix D-4 - Beneficiary Eligible Mitigation Action Certification
Appendix D-5 - Form of Certificate of Trust of Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries
Appendix D-6 - Designated Beneficiary's Participation Notice
Appendix D-7 - Beneficiary's Election to Opt Out Form
Appendix D-8 - Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas

**FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION
TRUST FOR INDIAN TRIBE BENEFICIARIES:**

WILMINGTON TRUST, N.A., AS TRUSTEE FOR THE VOLKSWAGEN DIESEL EMISSIONS
ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES, AND NOT
IN ITS INDIVIDUAL CAPACITY

Date:

David A. Vanaskey, Jr.
Administrative Vice President

By their execution of this Indian Tribe Trust Agreement each undersigned party represents that they are authorized signer for such Company entitled to sign on behalf of each Settling Defendant and that each of the Settling Defendants have taken all necessary corporate actions required to make this a legal, valid and binding obligation of each such Settling Defendant.

FOR VOLKSWAGEN AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date:

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date:

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

Date

ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
WILLIAM B. MONAHAN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
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giuffrar@sullcrom.com
nelles@sullcrom.com
monahanw@sullcrom.com

FOR DR. ING. h.c. F. PORSCHE AG:

Date:

Member of the Executive Board
Research and Development
DR. ING. h.c. F. PORSCHE
AKTIENGESELLSCHAFT
Porschestrasse 911
71287 Weissach, Germany

Date:

ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c. F. PORSCHE
AKTIENGESELLSCHAFT
Porscheplatz 1
70435 Stuttgart-Zuffenhausen, Germany

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date:

JOSEPH S. FOLZ
Vice President, General Counsel and Secretary
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

Date:

GLENN GARDE
Vice President, After Sales
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA,
INC.

Date:

GRANTA NAKAYAMA
JOSEPH A. EISERT
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006
gnakayama@kslaw.com
jeisert@kslaw.com

Date:

CARI DAWSON
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
cari.dawson@alston.com

ATTACHMENT C

Public Comments Received by the U.S.
Department of Justice

Boyd I. Gourneau
Chairman



Tribal Administration
187 Oyate Circle
Lower Brule, SD 57548
Phone: (605) 473-5561
Fax: (605) 473-5554

March 29, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

In response to the two telephone discussions regarding the oversubscribed VW Settlement funds and request for written comments, and as one of the 26 eligible tribes having submitted an eligible first round project, the Lower Brule Sioux Tribe of South Dakota respectfully asks that the following notes be reviewed and considered for the first and all subsequent rounds of funding. We appreciate the opportunity to submit our opinions and to weigh in on this important matter.

In the pursuit of clarity and consistency with terms and concepts, we have restated the conceptual approaches provided in the second letter addressed to tribal leaders on March 27th, 2018. The conceptual approaches have been re-ordered in order of importance to the Lower Brule Sioux Tribe and additional comments provided in red. The original order has been noted after each bullet point below in parentheses. Furthermore, we have taken the liberty of including 2 additional conceptual approaches and provided further explanation for their consideration.

1. **(Formerly #7)** Number of funding cycles - The Trust Agreement should reduce the number of initial funding cycles to **three** or fewer. While this would intensify application-related work in the near term, it could result in an overall reduction of time and effort, minimize the need for banking, and put the Trust's funds to work sooner. **Funds should be awarded on a first come first serve basis. All eligible 26 first-round projects totaling approximately \$30M should be funded in full, based on timely filing of application according to the eligibility requirements at the time of the first round. This would leave approximately \$25M for remaining rounds to distribute according to the same or new eligibility requirements. Lower Brule Sioux Tribe agrees with this**

conceptual approach with the additional conditions and views this as the absolute best and fairest way to distribute the first round of funding.

2. (Formerly #8) Eligibility for additional funding cycles - The Trust Agreement should provide that all federally-recognized Tribes that have submitted a certification for beneficiary status form (Appendix D-3 of the Trust Agreement) and have been determined a Beneficiary can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the Tribe wants to participate in the funding cycle. Lower Brule Sioux Tribe agrees to this conceptual approach.
3. (Formerly #9) Deadline for second funding cycle - The Trust Agreement should postpone the application deadline for the second funding cycle until December 1, 2018. Pursuant to the Partial Consent Decree, Volkswagen will have fully funded the Trust Fund by that date, increasing the amount of funds available for the second funding cycle. Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that the previous two conceptual approaches are approved for the first funding cycle.
4. (Formerly #2) Allocation formula for first funding cycle - The Trust Agreement should apply the following allocation formula for the oversubscribed first funding cycle: 50% of the available funding in the first funding cycle should be divided equally among the 26 Beneficiaries with an approvable funding request (subject to the ceiling in item 1). The remaining funding shall be divided among the 26 Beneficiaries based on population, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas) (the "population-based formula"). Lower Brule Sioux Tribe agrees with this conceptual approach as its secondary approach, but would also agree to an equal distribution between all 26 eligible first round tribes of 100% of available funding.
5. (Formerly #10) Allocation formula for additional funding cycles - As in the first funding cycle, the Trust Agreement should provide that half of the available funding in each of the second through fifth or sixth funding cycles will be split equally among the eligible Beneficiaries in that funding cycle and half by the population-based formula. Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that the previous conceptual approach (#4) is approved for the first funding cycle.
6. (Formerly #1) Ceiling set by funding request - The ceiling for an allocation for a Tribe should be set by the amount in the Tribe's funding request submitted to the Trustee for the first funding cycle. Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that the conceptual approaches #4 & #5 are approved for the first funding cycle, AND ONLY IF conceptual approach #1 is not considered. We recommend ceiling amount be set at \$500K.

7. (Formerly #11) Minimum actionable amount - The Trust Agreement should set a minimum "actionable amount," i.e., an amount that would be necessary to complete an Eligible Mitigation Action. If a Beneficiary receives an allocation under the actionable amount, the Trust Agreement should provide that Beneficiary with two options: (1) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (2) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Beneficiary, allowing it to add that amount to an allocation in a future funding cycle. We seek input on the concept of an actionable amount and an appropriate minimum amount. Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that the conceptual approaches #4 & #5 are approved for the first funding cycle, AND ONLY IF conceptual approach #1 is not considered. We recommend minimum actionable amount be set at \$200K.
8. (Formerly #4) Initial funding request and allocated amount - Due to the oversubscribed first funding cycle, there is a mismatch between the amount of funding requested by most of the 26 Beneficiaries and the likely allocation to those Beneficiaries. Accordingly, after the Trustee applies the allocation formula for the first funding cycle, the Trustee should provide notice to all Beneficiaries of the allocation for each Beneficiary. If a Beneficiary's funding request exceeded its allocation, the Trustee should request the Beneficiary to: (1) submit, within 30 days after the Trustee's notice, a revised funding request (Appendix D-4: Beneficiary Eligible Mitigation Action Certification) setting out what projects it would undertake given the allocated amount; (2) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (3) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Tribe to allow it to add that amount to an allocation in one of the next four funding cycles. Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that the conceptual approaches #1, #4 & #5 are NOT approved for the first funding cycle, and ONLY if option (1) to submit a revised funding request within 30 days is the ONLY option.
9. (Formerly #5) Maximum funding request - The Trust Agreement should establish a maximum amount that any one Beneficiary can request in any funding cycle. If so, what is an appropriate maximum amount for any given funding cycle? Lower Brule Sioux Tribe agrees to this conceptual approach on the condition that this conceptual approach DOES NOT apply to the first round. We recommend the maximum funding request amount be set at \$500K for all future rounds.
10. (Formerly #12) Modification of deadlines for Beneficiary designation by the Trustee and United States' notice of objection - Subparagraphs 4.01 and 4.02 of the Trust Agreement did not take into account that Indian Tribes are afforded the possibility to file a certification for beneficiary status under the Trust Agreement at any time. The Trust Agreement should be amended to require the Trustee to file its notice of Beneficiary designation on a date certain after the deadlines for the second through fifth funding cycles. The time for the United States to file any notice of objection would then follow 30 days after the Trustee's designation. Lower Brule Sioux Tribe agrees to this

conceptual approach unconditionally. It is clear that not every tribe and/or project will be funded. Setting a deadline will help with future planning and setting new rules for funding, enhancing the ability for future projects to be funded with minimal rounds, lower administrative expenses, and fewer potential pitfalls.

11. (Formerly #6) Maximum number of funding requests - As an alternative to a maximum amount for a funding request, the Trust Agreement should limit the number of times any one Beneficiary can submit a funding request in the first five funding cycles. An appropriate limit would be three funding cycles of the first five funding cycles. Lower Brule Sioux Tribe disagrees to this conceptual approach and would support a maximum funding amount awarded to any tribe and/or project.
12. (Formerly #3) Banking option (i.e., accumulation of allocated sums over the first four funding cycles) - The Trust Agreement should allow a Tribe to bank an allocated amount in a funding cycle with the Trust and add that amount to its allocation in the next funding cycle. This banking option would apply only for the first four funding cycles. Lower Brule Sioux Tribe disagrees with this conceptual approach based on the extra administrative duties and cost it would require by the trustee and the tribal entity, such as tracking, reporting, additional application creation and review, etc.

Lower Brule Sioux Tribe would like to recommend the following conceptual approaches for consideration:

1. Eliminate body replacement and focus on chassis or engine replacement only.

Provide separate body cost estimates for the vocational trucks, or those trucks that are built to perform a specific job function, such as refuse (trash) trucks, fuel and propane delivery, and service trucks. It is customary in the truck business to purchase truck chassis separately from the bodies since the body manufacturers are not the same manufacturers of the truck chassis. However, often the chassis manufacturer and/or dealer will work closely with the body manufacturer/dealer to assure the two separate components work together seamlessly.

It is important to note that without the two components working together, the truck isn't useful to the end user, and often in vocational applications, used bodies will not transfer effectively to new chassis and more importantly, the body, being the workhorse of the vehicle, is often in need of replacement before the chassis. Furthermore, tribal entities may find body replacement in certain applications such as refuse at nearly \$200,000 each to be cost prohibitive even if the new chassis are provided. At the same time, the purpose of these funds are to mitigate emissions from older diesel technology, which is accomplished by replacing the chassis and/or engine equipment, not the body. With limited available funds and more need than these funds can provide, it is crucial for distributions to maximize the benefit for which it is intended.

2. **Reduce eligible model years of trucks and engines. Focus on pre-2007 and pre-Tier 3.**
 - a. Pre-emissions engines, models manufactured prior to 2007 that do not require emissions aftertreatment should be considered first. NOx and particulate matter emissions were greatly reduced through required emissions aftertreatment equipment, therefore much more effort should be focused on equipment manufactured without aftertreatment.
 - b. Reduce eligibility of older truck/engine models. Rather than including models manufactured in 1992, consider eligible models manufactured in 1999 and higher. Many of those older trucks will go away on their own due to end of useful life. A 1992 model engine has been operating for 26 years, well beyond its intended useful life. Many of these engines have been rebuilt or overhauled and/or will not be expected to continue operating more than a few more years and in a limited capacity. It may also be important to exclude trucks with rebuilt, overhauled or replacement engines, specifically engine models that are older than 15 years.

For the LBST application, these changes would result in a reduction in equipment expenditure budget of \$1,046,500 for a total request for \$871,000 vs. the original \$1,917,500 budget. Furthermore, by reducing the eligible equipment expenditure, the 15% administrative budget cap would be reduced by \$156,975, resulting in an administrative budget cap of \$130,650 vs. \$287,625. Total savings to be distributed to other projects- \$1,203,475, approximately enough to replace 10 more trucks.

Thank you.



Boyd I. Gourneau, Chairman
Lower Brule Sioux Tribe

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March 22, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Sent via email to: OTJ@usdoj.gov

Re: Volkswagen Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries
Oversubscribed Funding Cycle

The Blue Lake Rancheria, California is a Beneficiary to the Volkswagen Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust) and has submitted an approved funding request for the first funding cycle. Stephen Kullmann, Community Development Director, participated in the first conference call on March 21, 2018, regarding the Oversubscribed Funding Cycle. Blue Lake Rancheria's written comments are as follows:

The first funding cycle for the Trust has been oversubscribed; there are more eligible funding requests than funds available in the Trust. Out of 29 Beneficiaries, 27 submitted funding requests, of which 26 were deemed eligible. These requests total over \$30 million, with approximately \$6 million available in this round. The Trust Agreement states that in the case of an oversubscribed funding cycle, funds will be allocated weighted in accordance to total population living within each Indian Tribe's Tribal area according to the 2010 census. The agreement does not specifically state how such weighting will be calculated or determined.

While there may be legitimate value to weighting the allocation based on total population, weighting the funds 100% on population would result in the majority of Beneficiaries receiving inadequate funds to complete any mitigation projects, and the vast majority of funding would go to a minority of eligible Beneficiaries. Frequently, smaller population Indian Tribes struggle with providing services to their communities with insufficient funds, although their needs remain great. A greater allocation to the smaller population Tribes has the additional advantage of providing benefit to a fuller portion of that Tribe's population, as well as the surrounding community.

The Blue Lake Rancheria therefore proposes a weighted formula wherein 50% of the total funds in an oversubscribed funding cycle are distributed according to population numbers and 50% are distributed evenly among all Beneficiaries with eligible funding requests for that round. This satisfies both needs of greater populations receiving more funds while smaller population Beneficiaries still receive sufficient funding to complete meaningful mitigation projects. Furthermore, this method does not change the requirement in the Trust Agreement to distribute the funds in a manner weighted by population. This method also has the advantage of being easily applied to future funding cycles because it relies on percentages rather than fixed amounts.

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Using the first funding cycle as an example of the 50/50 allocation-- in this first funding cycle there are 26 eligible requests. With approximately \$6 million available, each beneficiary would receive approximately \$115,000, with the remaining \$3 million distributed based upon population. On the other hand, if 100% of the allocation were distributed based solely on population, some eligible Beneficiaries would receive less than \$200.

Instead of amending the Trust Agreement to include a specified Maximum and Minimum funding request per cycle, it would be more useful and efficient to have suggested amounts based on the likelihood of over subscription. This will help Tribes realistically plan mitigation measures without having to amend the Agreement to have specific amounts. Blue Lake Rancheria recommends suggested funding requests of \$50,000 - \$500,000.

Instead of establishing a maximum amount for any one Beneficiary to request or receive over the course of the first six funding cycles, Blue Lake Rancheria recommends a maximum of three funding requests per Beneficiary over the first six cycles. If there are remaining funds at the end of the first six cycles, such funds will be distributed evenly or according to the 50-50% allocation detailed above, to all Beneficiaries with an eligible funding request.


Finally, in order to facilitate smaller population Beneficiaries' capacity to complete eligible mitigation projects, Beneficiaries should be permitted to pool funds from different funding cycles to complete a single project. For example, a Beneficiary could submit a funding request for the same mitigation activity over the course of up to three funding cycles to accumulate sufficient funding to complete that activity.

Thank you for your consideration of our comments.

On behalf of the Blue Lake Rancheria,



Arla Ramsey, Vice-Chair



Stephen Kullmann, Community Development Director

Cc Andy Bessler, Institute for Tribal Environmental Professionals

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March 29, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Sent via email to: OTJ@usdoj.gov

Re: Volkswagen Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries
Oversubscribed Funding Cycle, second telephonic session

The Blue Lake Rancheria, California is a Beneficiary to the Volkswagen Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust) and has submitted an approved funding request for the first funding cycle. Stephen Kullmann, Community Development Director, participated in the conference calls on March 21 and 27, 2018, regarding the Oversubscribed Funding Cycle. Blue Lake Rancheria's written comments are as follows:

The first funding cycle for the Trust has been oversubscribed; there are more eligible funding requests than funds available in the Trust. Out of 29 Beneficiaries, 27 submitted funding requests, of which 26 were deemed eligible. These requests total over \$30 million, with approximately \$6 million available in this round. The Trust Agreement states that in the case of an oversubscribed funding cycle, funds will be allocated weighted in accordance to total population living within each Indian Tribe's Tribal area according to the 2010 census. The agreement does not specifically state how such weighting will be calculated or determined.

In a letter to Tribal Leaders date March 27, 2018, the Department of Justice listed 12 Issues for Discussion, to which we will respond sequentially:

1. Ceiling set by funding request - The ceiling for an allocation for a Tribe should be set by the amount in the Tribe's funding request submitted to the Trustee for the first funding cycle.

A beneficiary should not receive an allocation greater than its funding request for each funding cycle. This should apply to the particular funding cycle the request was made. A beneficiary should have the option of making additional or larger funding requests in subsequent funding cycles.

2. Allocation formula for first funding cycle - The Trust Agreement should apply the following allocation formula for the oversubscribed first funding cycle: 50% of the available funding in the first funding cycle should be divided equally among the 26 Beneficiaries with an

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approvable funding request (subject to the ceiling in item 1). The remaining funding shall be divided among the 26 Beneficiaries based on population, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas) (the "population-based formula").

This is the option Blue Lake Rancheria suggested in its first comment letter dated March 22, 2018, and we still support this option. We would also support a split wherein greater than 50% is divided equally among Tribes, for example the 70/30 % split as suggested by the Coquille Tribe during the most recent OTJ conference call, where 70% would be divided equally and 30% subject to a population-based allocation.

3. Banking option (i.e., accumulation of allocated sums over the first four funding cycles) - The Trust Agreement should allow a Tribe to bank an allocated amount in a funding cycle with the Trust and add that amount to its allocation in the next funding cycle. This banking option would apply only for the first four funding cycles.

Blue Lake Rancheria also suggested this option in the March 22, 2018 letter, and still supports this option. It would allow Beneficiaries to complete meaningful mitigation measures even if the funding allocation from any individual allocation is too small.

Furthermore, the Beneficiary should have the option of progressing on and/or completing their mitigation measure with their allocated funds in a funding cycle, even if their allotment is less than the proposed cost of the mitigation measure. In these cases, where allocated funds in a particular round only cover part of the cost of their mitigation measure, the Beneficiary should receive those funds as partial funding. And we propose that Beneficiaries should be able to resubmit the same mitigation measure to receive funding in additional cycle(s) to recover the full costs of the measure.

Stated otherwise, the Beneficiary should not be required to wait until full funding is "banked" before either completing the mitigation measure or receiving partial funding, and should have the option of submitting the balance of costs in subsequent rounds of funding until the entire cost of the project is covered.

Total funding over multiple rounds may still fall short of the total costs of the mitigation measure, but if Beneficiaries were able to recoup some or all of the costs over successive rounds of funding, they may be better able to fund the complete project with other interim funding sources and cash flow.

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4. Initial funding request and allocated amount - Due to the oversubscribed first funding cycle, there is a mismatch between the amount of funding requested by most of the 26 Beneficiaries and the likely allocation to those Beneficiaries. Accordingly, after the Trustee applies the allocation formula for the first funding cycle, the Trustee should provide notice to all Beneficiaries of the allocation for each Beneficiary. If a Beneficiary's funding request exceeded its allocation, the Trustee should request the Beneficiary to: (1) submit, within 30 days after the Trustee's notice, a revised funding request (Appendix D-4: Beneficiary Eligible Mitigation Action Certification) setting out what projects it would undertake given the allocated amount; (2) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (3) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Tribe to allow it to add that amount to an allocation in one of the next four funding cycles.

Blue Lake Rancheria supports this option. Furthermore, if the Beneficiary opts for the banking option and has an approved funding request (D-4), that funding request should be automatically approved for any subsequent funding cycle until the requested funding is met. As stated above, the Beneficiary should also have the option of completing the approved mitigation project and continuing to receive funding until the mitigation cost is recovered. This would encourage Beneficiaries to actually complete approved mitigations even if the funding appropriation for each cycle is too small.

5. Maximum funding request - The Trust Agreement should establish a maximum amount that any one Beneficiary can request in any funding cycle. If so, what is an appropriate maximum amount for any given funding cycle?

This gets complicated if a single funding request is eligible for multiple cycles. It also ties into the maximum number of funding cycles in item 6 below. A Beneficiary should be able to put in a funding request for whatever amount they choose, but with the knowledge that funding cycles will likely continue to be oversubscribed and that full amount may not be available. The Blue Lake Rancheria suggests that after receiving an accumulated total of \$1 million or funding in four consecutive funding cycles, the Beneficiary is ineligible in the next funding cycle.

6. Maximum number of funding requests - As an alternative to a maximum amount for a funding request, the Trust Agreement should limit the number of times any one Beneficiary can submit a funding request in the first five funding cycles. An appropriate limit would be three funding cycles of the first five funding cycles.

See comment on Item 5 above

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7. Number of funding cycles - The Trust Agreement should reduce the number of initial funding cycles to five or fewer. While this would intensify application-related work in the near term, it could result in an overall reduction of time and effort, minimize the need for banking, and put the Trust's funds to work sooner.

The Blue Lake Rancheria supports this option. If this is applied, the maximum number of funding cycles in Item 6 would need to be adjusted accordingly.

8. Eligibility for additional funding cycles - The Trust Agreement should provide that all federally-recognized Tribes that have submitted a certification for beneficiary status form (Appendix D-3 of the Trust Agreement) and have been determined a Beneficiary can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the Tribe wants to participate in the funding cycle.

The Blue Lake Rancheria does not support this option.

A Beneficiary should have an approved mitigation measure, either new or as a carry-over from a previous cycle, to participate in a subsequent funding cycle. A Beneficiary should not automatically receive funding solely because of their status as a Beneficiary.

9. Deadline for second funding cycle - The Trust Agreement should postpone the application deadline for the second funding cycle until December 1, 2018. Pursuant to the Partial Consent Decree, Volkswagen will have fully funded the Trust Fund by that date, increasing the amount of funds available for the second funding cycle.

The Blue Lake Rancheria supports this option.

10. Allocation formula for additional funding cycles - As in the first funding cycle, the Trust Agreement should provide that half of the available funding in each of the second through fifth or sixth funding cycles will be split equally among the eligible Beneficiaries in that funding cycle and half by the population-based formula.

The Blue Lake Rancheria supports this option.

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11. Minimum actionable amount - The Trust Agreement should set a minimum “actionable amount,” i.e., an amount that would be necessary to complete an Eligible Mitigation Action. If a Beneficiary receives an allocation under the actionable amount, the Trust Agreement should provide that Beneficiary with two options: (1) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (2) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Beneficiary, allowing it to add that amount to an allocation in a future funding cycle. We seek input on the concept of an actionable amount and an appropriate minimum amount.

The Blue Lake Rancheria does not support this option.

It should be at the Beneficiary’s discretion if they choose to take a lesser amount of funding and cost-share the remainder to complete a mitigation measure, bank the amount, or opt out. A designated actionable minimum is unnecessary, would be difficult to define, and needlessly infringes the Beneficiary’s ability to best utilize its available funding.

12. Modification of deadlines for Beneficiary designation by the Trustee and United States’ notice of objection - Subparagraphs 4.01 and 4.02 of the Trust Agreement did not take into account that Indian Tribes are afforded the possibility to file a certification for beneficiary status under the Trust Agreement at any time. The Trust Agreement should be amended to require the Trustee to file its notice of Beneficiary designation on a date certain after the deadlines for the second through fifth funding cycles. The time for the United States to file any notice of objection would then follow 30 days after the Trustee’s designation.

The Blue Lake Rancheria has no opinion on this issue.

Finally, the Blue Lake Rancheria would like to reiterate its comment from its March 22, 2018 letter:

While there may be legitimate value to weighting the allocation based on total population, weighting the funds 100% on population would result in the majority of Beneficiaries receiving inadequate funds to complete any mitigation projects, and the vast majority of funding would go to a minority of eligible Beneficiaries.

Frequently, smaller population Indian Tribes struggle with providing services to their communities with insufficient funds, although their needs remain great. A greater allocation to the smaller population Tribes has the additional advantage of providing benefit to a larger percentage of that Tribe’s population, as well as the surrounding community.

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Allowing the bulk of mitigation funds to go to a minority of Beneficiaries defeats the purpose stated in the Consent Decree “to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated.” Distributing the mitigation funds over a wider geographic area to a larger number of Beneficiaries distributes the mitigation efforts far more equitably.

Thank you for your consideration of our comments.

On behalf of the Blue Lake Rancheria,

Arla Ramsey, Vice-Chair

Stephen Kullmann, Community Development Director

cc Andy Bessler, Institute for Tribal Environmental Professionals

From: Joe Cebe <Joe.Cebe@fcpotawatomi-nsn.gov>

Sent: Tuesday, March 27, 2018 5:43 PM

To: OTJ <OTJ@jmd.usdoj.gov>

Subject: Comments on todays call

I like options 1 and 2. D-4 sets the ceiling. 50% of the funds available are split equally and 50% based on population. I think this is fair for both the large and small tribes. Also banking in insufficient amount to be added to a future funding cycle would benefit both small and large tribes alike as well.

Thank you

Joe Cebe

FCPC Air Quality Specialist

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BILL ANOATUBBY
GOVERNOR

April 2, 2018

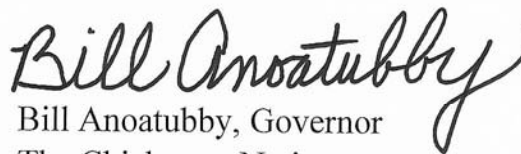
Ms. Gina L. Allery, Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue, N.W., Room 2318
Washington, DC 20530

Dear Ms. Allery:

Thank you for the March 16th letter and the March 27th letter to the Chickasaw Nation providing us with the opportunity to submit comments regarding the method for resolving over-subscription of the Tribal Allocation Subaccount for Eligible Mitigation Actions. The enclosed comments are provided by the Chickasaw Nation.

We look forward to working with you to further develop the method for allocation of annual funding for eligible mitigation actions. Your diligence in this important work that will benefit both the Chickasaw Nation and all of Indian country is appreciated.

Sincerely,


Bill Anoatubby, Governor
The Chickasaw Nation

Enclosure

The following comments are provided by the Chickasaw Nation in response to the letters dated March 16th and March 27th letter from the U.S. Department of Justice (DOJ):

Oversubscription Was Probable

1. The Indian Tribe Trust was allocated \$54,447,921.22 for remedial measures. This amount is to be distributed over the course of six years, roughly \$9 million per year. However, as the trust is not fully funded, only approximately \$6 million was made available in Year 1. Of the over 560 federally recognized Indian nations, 27 requested funding for mitigation actions. Due to the number of potential beneficiaries, the limited amount of funding available to Indian tribes, and the expense of meaningful mitigation actions, oversubscription was likely and a plan should have been in place from the beginning to address this issue.

The Current Allocation Formula Should Be Retained for Year 1

2. Some Indian tribes made strategic decisions based on the likelihood of oversubscription. Many tribes, including the Chickasaw Nation, made strategic decisions on funding based upon allocation and oversubscription methods set forth in the trust agreement. Making changes to a funding cycle during the same funding cycle disregards the tribes' reliance on the Tribal Trust Agreement and the planning, actions and expenses that tribes have taken in reliance on oversubscription allocation methods set forth in the trust agreement. Therefore, changes to oversubscription, if any, should become effective in subsequent funding cycles.

Other Alternatives

3. All Year 1 projects should be fully funded. Deficiencies in Year 1 funding should be proportionally allocated from remaining funding cycles or taken entirely from the final funding cycle. The formula for allocating funds as a result of oversubscription allocations should be effective in subsequent funding cycles. However, based on the massive Year 1 shortfall, this may not be practicable.
4. Decreasing the number of funding cycles would allow tribes to engage in more meaningful mitigation actions. A decrease in the number of funding cycles would make more funds available per year. As a result, tribes could undertake actions that would make a more significant reduction in NOx emissions.
5. The trustee should work to reduce administrative costs. Administrative costs for the State Trust account for 0.9% of the total funding. Administrative costs for the Tribal Trust account for 8.3% of the total funding. Reductions in administrative costs could be reallocated to tribal NOx reduction efforts.

6. The ability to "bank" funds through the first four funding cycles would allow all tribes to engage in at least one meaningful project.

Additional Comments

7. The oversubscription issue needs to be resolved in a prompt manner. The Year 1 funding cycle lasts roughly nine months. A quick resolution of this issue will allow tribes to prepare for Year 2 applications for funding which are due in approximately six months. Unnecessary delay would put tribes in a situation in which they are applying for future funding prior to receiving funds and implementing mitigation action plans.
8. The current delay with the possibility of submitting a funding request before these issues are fully resolved disadvantages tribes. The proposal to extend the Year 2 application deadline to December 1, 2018, would also allow tribes more time to evaluate changes to the oversubscription allocation methods and make decisions based upon the new allocation method.



CHEROKEE NATION
OFFICE OF THE SECRETARY OF
NATURAL RESOURCES

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

Sara Hill
Secretary of
Natural Resources

March 15, 2018

Volkswagen Diesel Emissions
Environmental Mitigation Trust for
Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Re: Notice and Court Order Pursuant to Subparagraph 5.2.16 and 5.0.5.2.3 of the Indian
Tribe Trust Regarding Approval of Funding Requests and Allocation

Dear Sir or Madam:

This letter concerns the March 5, 2018 order issued by the United States District Court for the Northern District of California, and the notice issued by the Trustee on that same day. The Cherokee Nation is one of 27 tribes who submitted requests for funding of Eligible Mitigation Action projects in the first funding cycle under the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries. The Cherokee Nation believes that the Trustee should

allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement, and is sending this correspondence in an attempt to briefly explain why. After consultation with Indian tribes, changes could be made in subsequent funding cycles.

The order states that the “United States and the parties to the Indian Tribe Trust agreement... have informed the Court that the amount of approvable funding requests from the beneficiaries exceeds the amount of available funding in the first funding cycle, and that if funds are distributed for the first funding cycle in accordance with the applicable allocation method, the result would be inconsistent with the purpose of the Indian Tribe Trust.” There was no motion filed by any party requesting a stay, and no justification offered in the order or subsequent notice. Moreover, the Cherokee Nation was not notified of the contact with the Court, nor given any opportunity to address potential concerns prior to receiving the order. Thus, it is impossible for the tribes to examine or understand the reasons behind this determination, and whether those reasons would be inconsistent with the purpose of the trust. Tribes are left in a position to speculate as to why the process, which had been requiring tribes to move along quite quickly, has come to a screeching halt.

For some time, the Cherokee Nation has been concerned about the potential for a large number of *de minimis* awards under the process created in the Indian Trust Agreement. The Cherokee Nation submitted comments to the Department of Justice on August 5, 2016, identifying this exact issue, noting that there were 567 federally recognized Indian tribes and only \$50 million available. The Nation specifically observed that dividing the funds into six funding cycles “might yield *de minimis* awards and prevent more worthwhile and environmentally beneficial projects [from being funded].” The Nation expressed concern that spreading the payments over six annual funding cycles could prevent meaningful, long-term investment in NOx mitigation by Indian tribes. The Justice Department did not respond to those comments.

Ultimately, the trust was implemented in its current form, which provides that if funding is oversubscribed, then the Trustee will allocate the available funds for that year by prorating it based on population data for each Tribe. Relying on this formula, tribes made the best strategic decisions they could when making applications or deciding whether to apply. Some tribes, like the Cherokee Nation, trimmed back more ambitious plans in an attempt to avoid oversubscription. Other tribes, cognizant of the cost involved with submitting an application for funding, decided not to apply for funding because they would not receive a substantial award if the funding was oversubscribed – and many tribes were concerned that oversubscription was not only a possibility, but a likely outcome. Changing the method for distribution now could result in many Indian tribes being punished for decisions that have been made, and which cannot now be ‘unmade’. In addition, the 27 tribes that did apply are now being subjected to an indefinite delay.

There are several possible ways to deal with the oversubscription of the trust funds. Undoubtedly, many of the best potential solutions will come from Indian tribes themselves through the consultation process. But that process will take time. Getting the first cycle of funding out to Indian country is essential, and should occur as quickly as possible. At the same time, the Trustee and the United States should begin consultation with Indian country to get input on the remaining funding cycles. Lowering the number of funding cycles to make more funding

available for each cycle may help with the oversubscription issue, and there may be other ways to ensure that *de minimis* awards don't threaten to derail the overarching goal of timely and efficient funding of Eligible Mitigation Actions while also ensuring equitable distribution of the funds.

Thank you for consideration of the Cherokee Nation's comments. I look forward to discussing further, and answering any questions.

Sincerely,



Sara E. Hill
Secretary of Natural Resources
Cherokee Nation

From: Irene Frantz [mailto:ifrantz@palatribe.com]
Sent: Friday, March 23, 2018 12:39 PM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: Shasta Gaughen <sgaughen@palatribe.com>
Subject: RE: DOJ EPA Notification: Volkswagen Settlement Formula Discussion

Please see attached comments submitted from the Pala Band of Mission Indians.

Irene Frantz, Environmental Administrative Assistant

PALA BAND OF MISSION INDIANS

(760.891.3510 7 760.742.3189

8 ifrantz@palatribe.com

* PMB 50 - 35008 Pala Temecula Rd.

Pala, CA 92059

ii Please consider the environment before printing this email

From: OTJ [mailto:OTJ@usdoj.gov]
Sent: Friday, March 16, 2018 8:27 AM
To: OTJ <OTJ@usdoj.gov>
Subject: DOJ EPA Notification: Volkswagen Settlement Formula Discussion

Dear Tribal Leader:

The Department of Justice and the Environmental Protection Agency invite you to participate in a discussion on the process for distribution of the Volkswagen Settlement-related Tribal Trust Agreement. Discussions will be held via teleconference on March 21 and 27. Please see the attached letter for information about the scope of the discussions and registration instructions.

Thank you.

Pala Band of Mission Indians response to the following possible approaches to allocation for an oversubscribed funding cycle:

1. Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

No, some Tribes have thousands or tens of thousands of members, Pala Band would not rank high on the list. Pala thinks the allocation formula should reflect a base minimum amount for which each Tribe is eligible, in an amount sufficient to complete a reasonable purchase or project. It was a mistake not to establish a cap from the get-go.

2. Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

Yes, Pala likes the idea of establishing a maximum amount that any one Tribe can receive over the course of all the funding cycles, and/or a maximum per funding cycle. Since the Trustee did not establish this for the first funding cycle, which is on them, and not on the Tribes who were able to timely submit their proposals.

3. Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

If funding the first-round proposals means no money is left for subsequent funding cycles, then Pala thinks Trustee should do two things: 1. Reduce the total number of funding cycles. 2. Let the tribes in the first funding cycle have the opportunity to modify their requests, with a maximum amount established.

4. Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate minimum amount?

Only if it allows beneficiaries the ability to complete approved projects.

From: Michael Layne <Mlayne@SanManuel-NSN.Gov>
Sent: Tuesday, March 27, 2018 4:51 PM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: IntraLinks <rcrane@wilmingtontrust.com>
Subject: RE: DOJ EPA Update: Volkswagen Settlement Formula Discussion

We have one additional comment to make in writing:

If the rules and process is being changed for the 1st Year Funding Cycle, then San Manuel Band of Mission respectfully requests permission to submit a revised project.

Our initial decision to apply under the DERA Option to replace standby/backup generators, was based on the rules and process that was established last year. If any of those terms are changed – had we known that beforehand – we may have very well submitted a different project under a different EMA category.

Michael Layne

GRANTS ADMINISTRATION MANAGER, TRIBAL FINANCE

O: (909) 864-8933 x2168

M: (909) 838-0559

26569 Community Center Drive, Highland California 92346

SAN MANUEL
BAND OF MISSION INDIANS

From: OTJ [<mailto:OTJ@usdoj.gov>]
Sent: Tuesday, March 27, 2018 7:47 AM
To: OTJ <OTJ@usdoj.gov>
Subject: DOJ EPA Update: Volkswagen Settlement Formula Discussion

Dear Tribal Leader:

The Department of Justice and the Environmental Protection Agency hope you will be able to participate in a discussion on the process for distribution of the Volkswagen Settlement-related Tribal Trust Agreement. Discussions this afternoon, March 27, at 4pm Eastern. Please see the attached for updated information in advance of today's discussion.

Thank you.

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FORT INDEPENDENCE INDIAN RESERVATION

P.O. BOX 67 • INDEPENDENCE, CA 93526 • (760) 878-5160 • FAX (760) 878-2311

March 26, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

RE: Volkswagen Diesel Emissions Environmental Mitigation Trust; Allocation in an Oversubscribed Funding Cycle

The Fort Independence Community of Paiute Indians of the Fort Independence Indian Reservation is pleased to submit these comments regarding the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to the partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

The Fort Independence Community of Paiute Indians of the Fort Independence Indian Reservation was one of the twenty-seven Beneficiaries that submitted a certification for beneficiary status in accordance with Appendix D-3 of the Trust Agreement. The Tribe submitted to the Trustee a Beneficiary Eligible Mitigation Action Certification form, which is Appendix D-4 of the Trust, by the deadline of January 2, 2018. Thus, the Tribe was among the twenty-six Beneficiaries who submitted approvable funding requests to receive funding for Eligible Mitigation Actions for the first funding cycle.

On March 2, 2018, the United States and the parties to the Trust Agreement, namely the Defendants and the Trustee, informed the Court that the amount of approvable funding requests from the Beneficiaries exceeded the amount of available funding in the first funding cycle, and that if funds are distributed for the first funding cycle in accordance with the applicable allocation method in the Trust, the result would be inconsistent with the purpose of the Trust. In its Order, the Court directed the United States and interested Beneficiaries to meet and confer in consultation with the Trustee, to discuss whether any adjustment to the Trust's allocation methodology, to ensure that the Trust funds are distributed in a manner that is consistent with the purpose of the Trust.

As one of the twenty-six Beneficiaries approved to receive funding requests for the Eligible Mitigation Actions for the first funding cycle, we strongly oppose the Trust Agreement allocation formula. The Trust Agreement allocation formula is weighted by means of total

population living within each Indian Tribe's tribal area according to the 2010 Census, including reservations, off-reservation trust lands, and statistical areas. The Tribe opposes the Census Bureau data, because it fails to address the undercounting of young children, minorities, low-income individuals, and other marginalized groups, such as the vulnerable Native American/Alaskan Native populations. The 2010 census does not provide fair and accurate data to reflect the Fort Independence Reservation's needs to reduce NOx. In addition, the Trust Agreements allocation formula situates the Tribe in a position to receive insufficient allocation to fund any Eligible Mitigation Action.

The Tribe acknowledges the total amount of approvable funding requests submitted during the first funding cycle is oversubscribed. The Tribe also recognizes that it's possible an oversubscribed funding issue will persist in future funding cycles. Therefore, the Fort Independence Tribe would like to propose possible approaches to address oversubscribed funding cycle allocations based on 'Issues for Discussion Questions' with an exclaimer that answers were provided based off general information given, rather than specific information given (i.e. statistical data), which would have been more efficient to assist in the scope of the tribe's response.

1. Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

No, the current allocation formula should not be retained. The Tribe recommends that all eligible Indian Tribe Beneficiaries be given an equal amount of money for the first funding cycle. As for subsequent years it's difficult to purpose a formula, because 567 Tribal entities are recognized and eligible for funding and services, according to Bureau of Indian Affairs¹. Hence, if all Trust Allocations, were to be given out equally the Tribe's would also receive insufficient allocations to fund any Eligible Mitigation Action.

2. Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

¹ Bureau of Indian Affairs Interior, (01/17/2017). *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, Number: 4915-4920, Retrieved from: <https://www.federalregister.gov/documents/2017/01/17/2017-00912/indian-entities-recognized-and-eligible-to-receive-services-from-the-united-states-bureau-of-indian>

The Trust Agreement should be amended to specify a maximum amount that one Beneficiary can request in a funding cycle. As for what is an appropriate maximum amount, it's difficult to place an appropriate maximum amount, due to unknown eligible Indian Tribe Beneficiaries who are seeking to apply and what their needs are to address reduction in NOx. To be fair the Tribe recommends that Tribes only be eligible to seek Volkswagen Diesel Emissions Environmental Mitigation Trust funds for a maximum of (4) cycles.

3. Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

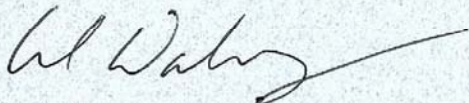
The Trust Agreement should establish a maximum amount that any one Beneficiary can request for the duration of the Trusts first six funding cycles. The appropriate maximum amount should be \$995,000.00.

4. Should the Trust Agreement Establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate minimum amount?

The Tribe recommends \$475,000.00 be the establish minimum amount allocated share for each Beneficiary.

Fort Independence Indian Community of Paiutes of the Fort Independence Indian Reservation are pleased to submit the aforementioned comments on the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to the partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). For any clarification or questions regarding these comments, please contact (760) 878-5160.

Sincerely,



Carl Dahlberg
Chairman

From: Michael Layne [mailto:Mlayne@SanManuel-NSN.Gov]
Sent: Monday, March 19, 2018 11:43 AM
To: Jacobs, Jeanne H.(OTJ) <jjacobs@jmd.usdoj.gov>
Cc: Allery, Gina L. (OTJ) <gallery@jmd.usdoj.gov>; Toulou, Tracy (OTJ) <ttoulou@jmd.usdoj.gov>
Subject: RE: Meeting reminder: Tribal Nations leadership Council March 27 3pm Eastern DOJ EPA Notification: Volkswagen Settlement Formula Discussion

Ms. Jacobs - we have run into another issue with the eligibility requirements under the EMA-10 category. Specifically, the Trust requires anyone submitting a project under category EMA-10 (i.e. backup/stand-alone generators) –to first submit a grant application to EPA for their Clean Diesel Tribal Grant Program – and be selected for funding – before the VW Settlement funds can be distributed.

For stand-alone/backup generator replacement projects, the EPA grant requires that each engine to be replaced run more than 500 hours annually. In our case, our EPA air-permit only allows the Tribe to operate all six backup generators for 558 hours annually –collectively. As such, we are unable to meet the grant requirement and our proposal has been deemed by EPA to be ineligible for consideration.

We would encourage both EPA and DOJ to consider dropping or modifying the Trust language for EMA-10 category projects, in which Tribes seeking to replace older diesel generator engines NOT be required to first obtain EPA grant funding when the EPA air-permit operating requirements on those engines preclude the Tribe from meeting or exceeding the grant operating threshold for each engine.

As far as the over-allocation method, we will continue to urge the Trust to give higher priority to tribes located in or near areas that have historically suffered from extreme air pollution -regardless of population size. There are many small Tribes –for example, in and around the Greater L.A. Area that have small tribal populations but who suffer from the worse air-pollution levels nationwide. In such cases, we have advocated for these Tribes to be allowed to use Metropolitan Statistical Area population data when the proposed project will help both the Tribe and surrounding urban population. It is categorically unfair to award a greater amount of funding to Tribes in rural areas with larger populations –who do not suffer disproportionately from the air quality issues that many small tribes in urban areas do. I hope this makes sense.

In the end, I think the Trust should set this up like a grant competition –giving higher points/priority to feasible projects that will reduce diesel emissions in or near urban populations. It is the smaller tribes – in these urban areas - who suffer the most from diesel emissions.

I will provide these comments on the phone call on Weds. Thank you for listening.

-Mike Layne
San Manuel Band of Mission Indians

Michael Layne

GRANTS ADMINISTRATION MANAGER, TRIBAL FINANCE
O: (909) 864-8933 x2168
M: (909) 838-0559
26569 Community Center Drive, Highland California 92346

From: Jacobs, Jeanne H. (OTJ) [<mailto:Jeanne.Jacobs@usdoj.gov>]

Sent: Friday, March 16, 2018 8:44 AM

To: Delores Tu'tsi <dtu'tsi@hopi.nsn.us>; Francelia Johnson <fjohnson@navajo-nsn.gov>; Gay Kingman <kingmanwapato@rushmore.com>; Greg Pitcher <gpitcher@shawnee.at>; Harold Frazier <HaroldCFrazier@yahoo.com>; Herman Honanie <hehonanie@hopi.nsn.us>; Jennifer McLaughlin <jmclaughlin@jamestowntribe.org>; John Barrett Jr <JMoucka@potawatomi.org>; Juana Majel Dixon <jmajel@aol.com>; Lynn Malerba <lmalerba@moheganmail.com>; Melanie Benjamin <melanie.benjamin@millelacsband.com>; Merlin Sioux <merlin.siuox@cheyennenation.com>; Michael Stickman <mickeystickman@gmail.com>; Paul Mountain <paul.mountain@tananachiefs.org>; Perry Riggs <priggs@nnwo.org>; Ron Allen <rallen@jamestowntribe.org>; Ron Sparkman <shawneetribes@shawnee-tribe.com>; Russell Begaye <russellbegaye@gmail.com>; Susan Klapel <susan.klapel@millelacsband.com>; Tamera Begay <tbegay@nnwo.org>; William Snell <william.snell@rmtlc.org>

Cc: Toulou, Tracy (OTJ) <Tracy.Toulou2@usdoj.gov>; Allery, Gina L. (OTJ) <Gina.Allery@usdoj.gov>

Subject: Meeting reminder: Tribal Nations leadership Council March 27 3pm Eastern DOJ EPA Notification: Volkswagen Settlement Formula Discussion

Dear Tribal Leaders:

We hope you will be able to join us for our next TNLC call, which is scheduled for March 27 at 3pm Eastern. In addition to any topics you wish to raise before or during the meeting, we would like to discuss the following opportunity (announced earlier today): The Department of Justice and the Environmental Protection Agency invite you to participate in a discussion on the process for distribution of the Volkswagen Settlement-related Tribal Trust Agreement. Discussions will be held via teleconference on March 21 and 27. Please see the attached letter for information about the scope of the discussions and registration instructions. Our TNLC call will take place just before the last Volkswagen Settlement-related discussion so could be particularly helpful to you if you plan to join in on that discussion.

If the group is interested, a representative from the FBI Criminal Justice Information Services (CJIS) Division's Tribal Engagement Program (TEP) is interested in coming to talk to you about their program. The TEP serves to provide assistance to tribal agencies with little to no authorized access to criminal justice information for criminal justice and noncriminal justice purposes. The TEP offers guidance to access and participation in the FBI CJIS Division programs by facilitating onsite meetings with tribal agencies, presenting CJIS Division overviews at tribally sponsored conferences and continued support to the DOJ Tribal Access Program. Through participation in conferences, onsite visits and encouraging open communication, the TEP provides education and assistance on the FBI's National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange, Law Enforcement Enterprise Portal and Uniform Crime Reporting program. If you would like to hear more from them please let me know.

Call in information for the TNLC call on March 27 at 3pm is as follows:

Call-in number: 202-353-0877 or 800-521-6079

Pass code: 18983036#

Thank you,
Jeanne

Jeanne Jacobs
Office of Tribal Justice
US Department of Justice
202.514.8835 tel

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Fond du Lac Reservation • 1720 Big Lake Road • Cloquet, MN 55720

Phone: 218-878-7108 • Fax: 218-878-7168



March 29, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

To Whom It May Concern:

The Fond du Lac Band of Lake Superior Chippewa (the Band) is a federally recognized tribe with a Reservation located in northeastern Minnesota. The Band retains hunting, fishing and gathering rights on more than 8 million acres of territory in Northeastern Minnesota ceded to the United States government under the Treaties of 1837 and 1854. The Band also exercises Treaty Rights in the 1837 and 1842 Ceded Territories of Wisconsin and Michigan. The Band has Treatment as an Affected State status for air related activities that take place on or near the Reservation and/or other tribal lands. There are roughly 4,000 Band members living both on and off-Reservation who are exposed daily to emissions from diesel vehicles. For this reason, the Band submitted the necessary materials to be established as a Beneficiary under the Volkswagen Tribal settlement, as well as a detailed mitigation plan requesting funds for specific project.

Letters from the Department of Justice (DOJ) to tribal leaders dated March 16, 2018 and March 27, 2018, explain that the first funding cycle is oversubscribed and that subsequent funding cycles may experience the same problem, such that a few tribes with large tribal populations could receive most of the funding during each cycle due to the DOJ's allocation formula, which uses only tribal population considerations to allocate funds. The Trustee believes that this situation does not support the purpose of the settlement and is seeking tribal input on what might be a better way to allocate these funds. The March 16th letter gave four discussion questions for tribes to consider. The March 27th letter gave twelve specific proposals, brought forward by tribes on a March 21st conference call with tribes. The Band is responding to these twelve points, as shown below.

1) The Band does not object to this proposal.

2) The Band does not support this suggestion. According to the Trustee, the current funding situation is such that if the first round of proposals is awarded based on the current population based formula, one tribe with a large population will end up with millions of dollars, while smaller tribes will end up with amounts that range from \$200-\$10,000. These amounts are insufficient to complete a project that will result in meaningful emissions reductions. The Band believes that one of the considerations of distribution should be the strength of the application. A population based approach does not take into consideration such things as the age of the vehicles to be replaced, the amount of emissions that will be removed from the ambient air, or the specific needs of the individual tribes. Additionally, awards of smaller amounts will mean that electric vehicle (EV) charging stations will be more difficult to install, as the total cost of these installations can only be 15% of any tribe's allocation amount. The Band believes that moving toward EV transportation is a very important goal of the VW settlement. It is also true that larger tribes may have more independent sources of income than smaller tribes, meaning that they are better able to pay for emissions reductions themselves.

Furthermore, as stated on the conference calls held on March 21 and March 27, many tribes feel that the census numbers used by the Trustee do not accurately reflect their actual populations. First, the Trustee's numbers came from the 2010 census, which is now eight years out of date. Second, the census numbers used may be incorrect because they inadvertently missed some tribes. There are also a few tribes who have only recently been federally recognized, meaning that they were also not included in the 2010 census.

3) Fond du Lac supports the banking option.

4) This proposal seems to do nothing more than to keep the current population based approach but give smaller tribes the option of accepting awards that are too small to carry out any kind of project, give up any award, or bank its reward. The only acceptable option of the three is to bank any award until more funds can be applied for and received.

5) The Band supports a maximum funding request of \$500,000 per cycle, with a "lifetime cap" of \$2,000,000 per tribe.

6) Limiting the number of funding cycles during which a tribe may apply could lead to a lifetime cap if coupled with maximum awards per cycle, but could also allow larger tribes to completely

sweep several funding cycles if no maximum per cycle is set. We prefer the approach outlined in our response to question 5 above.

7) The Band supports reducing the number of funding cycles to five. This is due to the time loss of money. The real value of the money in the trust will decrease by roughly 3% per year, simply due to inflation, leaving tribes with less spending power as time goes by.

8) The Band does not object to this suggestion.

9) The Band supports postponing the deadline for the second funding cycle until December 1, 2018.

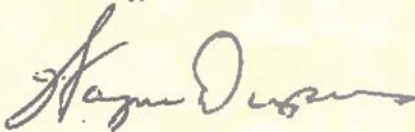
10) Similar to our response to question #2, the Band does not support a population based funding allocation. Rather, we support minimum and maximum caps per funding cycle and an overall lifetime cap per tribe, with allocations to be based on the merits of the application.

11) The Band suggests a minimum allocation amount of \$200,000 per funding cycle, with the option to bank any such allocation for a subsequent year. In researching our potential projects, we have found that it is difficult to do any meaningful reduction project for under \$150,000, and other costs will also apply for any such project, such that \$200,000 would make a good minimum.

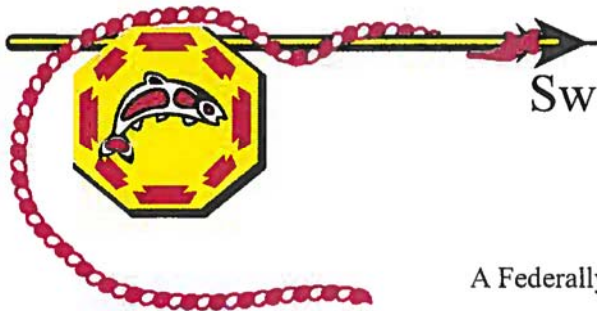
12) The Band does not object to suggested item #12.

Thank you for the opportunity to provide input on this matter. If you have any further questions please call Joy Wiecks of my staff at 218-878-7108.

Sincerely,



Wayne Dupuis
Environmental Program Director
Fond du Lac Band



Swinomish Indian Tribal Community

Office of the Tribal Attorney
11404 Moorage Way, La Conner, WA 98257
P: 360.466.1134 F: 360.466.5309

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 5123

March 26, 2018

Gina L. Allery, Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

VIA: email to OTJ@usdoj.gov

RE: Swinomish Indian Tribal Community's Comments on the Process for Distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

Dear Ms. Allery,

The Swinomish Indian Tribal Community (Swinomish) submits these comments in response to the Department of Justice's March 16, 2018 request for comments (March 16 Letter) discussing possible approaches to allocation for an oversubscribed funding cycle of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). For convenience, Swinomish has organized its comments according to the four questions for discussion posed by Justice in its March 16 Letter.

Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

The current allocation formula should not be retained because it fails to achieve the express purpose of the Mitigation Trust Agreement: to "reduce emissions of nitrogen oxides ('NOx') where the Subject Vehicles were, are, or will be operated." Also, the current allocation formula fails to account for "communities that have historically borne a disproportionate share of the adverse impacts of [NOx] emissions," even though each Beneficiary was required to describe how its project would favor such communities (§ 5.2.10 of the Trust Agreement). Instead, the allocation formula is biased towards the tribes with the largest land bases because it is based solely on reservation populations. Reservation population figures are a poor heuristic for measuring concentrations of Subject Vehicles or identifying disproportionately-impacted communities. In addition to having little utility to the purposes of the Trust Agreement, that bias prejudices tribes, like Swinomish, that have smaller reservations but that rely greatly on the exercise of treaty rights off-reservation. As a replacement formula, Justice should:

Ms. Gina L. Allery, Deputy Director

March 26, 2018

Page 2 of 3

1. Not prejudice tribes, like Swinomish, with smaller reservations but widespread off-reservation treaty-reserved resources;
2. Favor projects located in areas where the Subject Vehicles were, are or will be operated; and
3. Favor projects that take place in communities that have historically borne a disproportionate share of the adverse impacts of NOx emissions.

Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

The Trust Agreement should be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle. Due to the scarcity of funding relative to the number of qualifying projects, there is a risk that the entirety of the Trust could go to a few tribes that have large fleets. The tribes with the largest fleets (and the corresponding ability to generate more qualifying projects) are not necessarily the tribes that are most impacted by the NOx emissions from the Subject Vehicles. If adopted, the replacement formula, above, would marshal Trust resources to the tribes most impacted by NOx emissions from the Subject Vehicles. But, unless a maximum limit is imposed, the distribution of Trust resources will always favor tribes with large fleets and may prevent tribes with small fleets from receiving any funding at all—even if they were highly impacted. Favoring tribes with large fleets would obstruct a more national distribution of such benefits. The limit should be set to effect the broadest distribution of projects that are prioritized by the replacement formula (above). Without the entirety of the data, Swinomish cannot estimate the limit that would accomplish that distribution. If the limit were set at \$500,000 per cycle, however, no single tribe could accumulate more than about 6% of the overall fund. Given the scarcity of funding in relation to the interest, a 6% cap is reasonable.

Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

Swinomish prefers limiting the amount available during each funding cycle (which will have the effect of also limiting the amount available over all funding cycles) to merely setting an overall limit. As stated above, the limit should be set to effect the broadest distribution of projects that are prioritized by the replacement formula. Suppose, for instance, five projects were of first priority under the replacement allocation formula, but there was not enough funding in the cycle to fully fund all five projects. How would one select which projects to fund and which not to? While a similar circumstance might arise under a per-cycle limit, it is far less likely because each tribe will be limited to one-sixth of what it would be limited to under the overall limit regime.

Rather than a maximum dollar amount for any one Beneficiary, the purposes of the Trust Agreement to “reduce emissions of nitrogen oxides (‘NOx’) where the Subject Vehicles were,

Ms. Gina L. Allery, Deputy Director

March 26, 2018

Page 3 of 3

are, or will be operated,” and funding projects for “communities that have historically borne a disproportionate share of the adverse impacts of [NOx] emissions,” can best be achieved by also limiting the number of funding cycles in which any one Beneficiary may receive funding. Again, Swinomish lacks the entirety of the data but suggests four funding cycles as a reasonable limit to achieve the purposes of the Trust and result in an equitable distribution of funding.

Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is the proper minimum amount?

The scarcity of funding relative to tribal interest in the program should not come as a surprise, given the number of Federally-recognized tribes and the needs of their respective governments. The funding opportunity was made available across all of Indian Country without prioritizing for concentrations of Subject Vehicles, cumulative effects, or national distribution of funds. In the event of over-allocation, the solution established was to prioritize according to reservation population—which also doesn’t account for concentrations of Subject Vehicles, cumulative effects, or national distribution. Regardless of whether this crisis should have been anticipated or avoided, if the replacement allocation formula above is adopted, allocation of the Trust Account will be better tailored to the purpose of reducing NOx (1) where the Subject Vehicles, were, are, or will be operated; and (2) in “communities that have historically borne a disproportionate share of the adverse impact of such emissions.” But it is nevertheless likely that the Trust Account will still be inadequate.

A minimum of \$200,000.00 would ensure that most tribes had the opportunity to engage in at least one small scale but meaningful project. This would be preferable to the current allocation system because it (1) would produce a more national distribution; (2) would not prejudice tribes, like Swinomish, with smaller reservations and off-reservation treaty-rights; and (3) would prevent tribes with qualifying projects from missing out entirely due to the scarcity of resources. But, absent other criteria, a minimum would not be optimized to the purposes of reducing NOx in areas where the Subject Vehicles were, are or will be operated, or in communities that have historically borne a disproportionate share of the adverse impacts of such emissions. Swinomish therefore proposes that a minimum of \$200,000.00 only be employed among projects that have already been prioritized according to the purposes of the Trust Account.

If you have any questions about our comments, please call me at (360) 707-8689 or email at dwatts@swinomish.nsn.us.

Sincerely,



Daniel Watts
Staff Attorney

From: Jean McInnis <jmcinnis@moheganmail.com>
Sent: Monday, March 26, 2018 12:02 PM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: Kevin Meisner <kmeisner@moheganmail.com>; Paul Sturges <psturges@moheganmail.com>; Deb Maxeiner <dmaxeiner@moheganmail.com>
Subject: Tribal Allocation Subaccount written comments

To: Gina Allery, Deputy Director, Office of Tribal Justice
From: Jean McInnis, Environmental Protection Administrator, Mohegan Tribe of Indians of Connecticut
Date: March 26, 2018
Re: Tribal Allocation Subaccount discussion comments

Dear Deputy Director Allery:

The Mohegan Tribe of Indians of Connecticut ("Mohegan Tribe") submits the following comments after participating in the March 21, 2018 Discussion Session regarding finding a solution to tribal oversubscription in the first funding cycle of the Tribal Allocation Subaccount for the Volkswagen Settlement. The questions posed to the tribes are below, followed by our comments:

1. *Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?*

Should you decide to use the allocation formula as currently stated in the Trust Agreement, the result will be inconsistent with the purpose of the trust. As stated during the Listening Session, more than \$30,000,000 of approvable requests were submitted by 26 Indian tribes, which resulted in an oversubscription to available funds and a triggering of the allocation formula. Under the current formula, 25 out of 26 tribes would receive far less than requested, some as low as \$200 (two hundred dollars) per tribe. It was due to this result that the Judge ordered the parties to confer and to attempt to find a solution. Simply moving forward with no adjustments to allocation methodology should not be considered an option.

In our view, the following factors should be considered as part of an allocation formula: 1) whether the tribe is located in a NOx non-attainment area – a preference should be given to tribes located in more polluted areas; 2) traffic counts (especially during the ozone season) within a tribe's area of jurisdiction, which would provide data on actual damage caused to a tribe by vehicles equipped to pollute without detection; 3) we do not support the use of 2010 Census data, as that data is outdated and far less accurate than population and acreage numbers that are up to date, accurate and readily obtainable from the Indian tribes and the Bureau of Indian Affairs.

2. *Should the Trust Agreement be amended to specify a maximum amount that any one beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?*

A maximum amount per beneficiary should be specified. That maximum amount should be determined using a formula that allows each tribe applying in a funding cycle to receive funding adequate to complete a meaningful project. Tribes should be allowed to revise their project requests if it is determined that their proposed project requests cannot be fulfilled. Alternatively, for tribes having the means to complete a proposed project using tribal or other funds, a partial payment could be approved.

3. *Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?*

A maximum amount should be specified as detailed in the answer to question number 2 above. Once funding is received in a cycle, priority should be given to tribes that have received no funding.

4. *Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate minimum amount?*

Each tribe that qualifies for funding should receive an amount adequate to fund a meaningful project.

Thank you for the opportunity to provide these comments. We look forward to further discussion on March 27, 2018.

Sincerely,

Jean McInnis
Environmental Protection Administrator
Mohegan Tribe of Indians of Connecticut



CHEROKEE NATION
OFFICE OF THE SECRETARY OF
NATURAL RESOURCES

Sara Hill
Secretary of
Natural Resources

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

March 16, 2018

Volkswagen Diesel Emissions
Environmental Mitigation Trust for
Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Re: Notice and Court Order Pursuant to Subparagraph 5.2.16 and 5.0.5.2.3 of the Indian
Tribe Trust Regarding Approval of Funding Requests and Allocation

Dear Sir or Madam:

This letter concerns the March 5, 2018 order issued by the United States District Court for the Northern District of California, and the notice issued by the Trustee on that same day. The Cherokee Nation is one of 27 tribes who submitted requests for funding of Eligible Mitigation Action projects in the first funding cycle under the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries. The Cherokee Nation believes that the Trustee should

allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement, and is sending this correspondence in an attempt to briefly explain why. After consultation with Indian tribes, changes could be made in subsequent funding cycles.

The order states that the “United States and the parties to the Indian Tribe Trust agreement... have informed the Court that the amount of approvable funding requests from the beneficiaries exceeds the amount of available funding in the first funding cycle, and that if funds are distributed for the first funding cycle in accordance with the applicable allocation method, the result would be inconsistent with the purpose of the Indian Tribe Trust.” There was no motion filed by any party requesting a stay, and no justification offered in the order or subsequent notice. Moreover, the Cherokee Nation was not notified of the contact with the Court, nor given any opportunity to address potential concerns prior to receiving the order. Thus, it is impossible for the tribes to examine or understand the reasons behind this determination, and whether those reasons would be inconsistent with the purpose of the trust. Tribes are left in a position to speculate as to why the process, which had been requiring tribes to move along quite quickly, has come to a screeching halt.

For some time, the Cherokee Nation has been concerned about the potential for a large number of *de minimis* awards under the process created in the Indian Trust Agreement. The Cherokee Nation submitted comments to the Department of Justice on August 5, 2016, identifying this exact issue, noting that there were 567 federally recognized Indian tribes and only \$50 million available. The Nation specifically observed that dividing the funds into six funding cycles “might yield *de minimis* awards and prevent more worthwhile and environmentally beneficial projects [from being funded].” The Nation expressed concern that spreading the payments over six annual funding cycles could prevent meaningful, long-term investment in NOx mitigation by Indian tribes. The Justice Department did not respond to those comments.

Ultimately, the trust was implemented in its current form, which provides that if funding is oversubscribed, then the Trustee will allocate the available funds for that year by prorating it based on population data for each Tribe. Relying on this formula, tribes made the best strategic decisions they could when making applications or deciding whether to apply. Some tribes, like the Cherokee Nation, trimmed back more ambitious plans in an attempt to avoid oversubscription. Other tribes, cognizant of the cost involved with submitting an application for funding, decided not to apply for funding because they would not receive a substantial award if the funding was oversubscribed – and many tribes were concerned that oversubscription was not only a possibility, but a likely outcome. Changing the method for distribution now could result in many Indian tribes being punished for decisions that have been made, and which cannot now be ‘unmade’. In addition, the 27 tribes that did apply are now being subjected to an indefinite delay.

There are several possible ways to deal with the oversubscription of the trust funds. Undoubtedly, many of the best potential solutions will come from Indian tribes themselves through the consultation process. But that process will take time. Getting the first cycle of funding out to Indian country is essential, and should occur as quickly as possible. At the same time, the Trustee and the United States should begin consultation with Indian country to get input on the remaining funding cycles. Lowering the number of funding cycles to make more funding

available for each cycle may help with the oversubscription issue, and there may be other ways to ensure that *de minimis* awards don't threaten to derail the overarching goal of timely and efficient funding of Eligible Mitigation Actions while also ensuring equitable distribution of the funds.

Thank you for consideration of the Cherokee Nation's comments. I look forward to discussing further, and answering any questions.

Sincerely,

Sara Hill

Sara E. Hill
Secretary of Natural Resources
Cherokee Nation



CHEROKEE NATION
OFFICE OF THE SECRETARY OF
NATURAL RESOURCES

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

Sara Hill
Secretary of
Natural Resources

March 26, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: Comments Regarding Potential Changes to the Indian Tribe Trust Regarding
Oversubscription Allocation

Dear Sir or Madam:

This letter concerns potential amendments to the oversubscription allocation method in the Environmental Mitigation Trust Agreement For Indian Tribe Beneficiaries (“Indian Trust Agreement”). Reference is made to the March 5, 2018 order issued by the United States District Court for the Northern District of California (“March 5 Order”); the notice issued by the Trustee Wilmington Trust, N.A. (“Trustee”) on that same day; the March 16, 2018 letter issued by the Office of Tribal Justice (“March 16 Letter”); the call held on March 21, 2018 regarding these issues (“March 21 Call”); and the Cherokee Nation’s letter to the Trustee, U.S. Department of Justice (“DOJ”), and U.S. Environmental Protection Agency (“EPA”) dated March 16, 2018 (a copy of which is enclosed for your reference). For reasons set forth in the Cherokee Nation’s March 16 letter and in these comments, the Cherokee Nation believes that the Trustee should allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement. After further consultation with Indian tribes—beyond the two calls currently contemplated—changes could be made in subsequent funding cycles.

**I. The Overarching Purpose Of The Indian Trust Agreement Is To Mitigate NOx
Where The Illegal VWs Were, Are, Or Will Be Operated**

As an initial matter, the Cherokee Nation wishes to voice its concern over the incomplete and inaccurate characterization of the purpose of the Indian Trust Agreement being used by the DOJ and EPA. The Indian Trust Agreement contains a “Purpose and Recital” section beginning on its first page, stating:

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Whereas, the Defendants are required to establish this Indian Tribe Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) where the Subject Vehicles were, are, or will be operated (“Eligible Mitigation Actions”), and to pay for Trust Administration Costs as set forth in this Indian Tribe Trust Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe Trust Agreement and the State Trust Agreement is intended to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated[.]”

This statement of purpose properly recognizes that the funds for the Indian Trust Agreement are available due to a specific issue—namely, the VW defeat device scandal—and that Mitigation efforts must have a nexus to the location of the harm caused by the illegal VWs. The Cherokee Nation’s concern is that while this statement of purpose is front and center in the Indian Trust Agreement, it is conspicuously absent from the March 5 Order, the March 16 Letter, and the opening statements by Rob Mullaney during the March 21 Call, all of which only mention language from Section 2.0.3 of the Indian Trust Agreement. While the Cherokee Nation would certainly agree that one purpose of the Indian Trust Agreement is to timely and efficiently fund Eligible Mitigation Actions, where those projects occur is subject to the overarching purpose of mitigating NOx where the illegal VWs were, are, or will be operated.

In establishing the state allocations, it seems clear that the DOJ, EPA, states, and Trustee followed this overarching purpose. Indeed, the EPA has explicitly stated that:

The allocation structure is primarily based on the number of registered illegal Volkswagen vehicles within the boundaries of the beneficiary. Therefore, those beneficiaries with more illegal 2.0 liter cars will receive a larger allocation of trust funds.

See www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement#mitigation (last visited March 21, 2018).

Going forward, the Cherokee Nation would ask that the DOJ and EPA cease using only the language from Section 2.0.3 of the Indian Trust Agreement, and instead use a more complete and accurate statement of purpose that includes the overarching purpose of mitigating NOx where the illegal VWs were, are, or will be operated.

II. The First Year Funds Should be Immediately Funded as Already Provided For in the Indian Trust Agreement

As previously stated by the Cherokee Nation in its March 16, 2018 letter, the Cherokee Nation would ask that the Trustee immediately allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement. As further set forth therein, the tribes that applied in year one did so in reliance on the rules that were then established. Changing the method for distribution now could result in many Indian tribes being punished for decisions that have been made, and which cannot now be unmade. Moreover, the Cherokee Nation

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understands from the initial call that roughly 10% of the available monies will be distributed in the first year. Because this is a relatively small amount of the trust funds, there is no reason to further delay year one even if some changes to the allocation are ultimately determined to be necessary for subsequent years. One purpose of the Indian Trust Agreement is to timely fund projects, and further delay obviously frustrates that purpose.

The Cherokee Nation was disheartened to hear the DOJ, EPA, and Trustee waited 60 days before deigning it appropriate to inform tribes that the funds would be oversubscribed. When over \$30 million in applications were submitted on January 2, the tribes should have been informed as soon as possible; instead they heard on the date funds were supposed to be released. Given the repeated emphasis on transparency, this oversight is difficult to understand.

III. A Per Capita Allocation, Despite Its Flaws, Roughly Distributes Funds Where The Illegal VWs Were, Are, Or Will Be Operated

There are several methods that could be used to attempt to distribute funds to mitigate NOx where the illegal VWs were, are, or will be operated. A per capita method that uses population works because, statistically, the illegal VWs are likely distributed amongst any population such that an area with more people likely has more illegal VWs. Thus, for example, if Area A has 10 times as many people as Area B, it follows that Area A likely has 10 times as many illegal VWs than Area B. Using registration information for the illegal VWs is likely more accurate because it could help account for factors other than population that may impact the variance in the actual distribution of illegal VWs. For example, there may be more VWs per capita in Germany than Japan because VWs may be more popular in Germany than in Japan. This appears to be the method the DOJ, EPA, states, and Trustee used for the state allocation structure. However, during the March 21 Call it was stated that the states did make changes to an allocation based solely on registered vehicles to ensure that some smaller states received sufficient funds, which came at the expense of larger states agreeing to a smaller share than what they would have been entitled to based solely on vehicle registrations.

Since illegal VW registrations are not available for tribes, comparing the state allocation actually used against a per capita method based on population provides several insights that help provide guidance here. For example, based on the 2010 census, the average per capita distribution for the state trust was \$9.17 per person (\$2,865,635,889.38 total state allocation divided by 312,471,327 people). The highest per capita award was Wyoming at \$14.42 per person (\$8,125,000.00 allocation divided by 563,626 people). Stated slightly differently, Wyoming received an award that was 1.57 times larger than an award it would have received if only population had been used (\$14.42/\$9.17).

More importantly, while there is some variance between the two methods, using a straight population model roughly tracks the state allocation method actually used. This, along with the fact that vehicle registrations can't be used for tribes, likely explains why the Indian Trust Agreement provided for a per capita allocation in an oversubscribed scenario. While that method has its flaws, it nevertheless was a reasonable attempt to allocate funds to mitigate NOx where the illegal VWs were, are, or will be operated. As will be discussed below, this contrasts

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with the ideas discussed at the March 21 Call, which have no nexus with funding projects where the illegal VWs were, are, or will be operated.

IV. The Proposals Mentioned During The March 21 Call Would Change The Purpose Of The Indian Trust Agreement By Removing Any Nexus To The Illegal VWs, And Would Be Patently Inequitable

In the March 16 Letter, the EPA and DOJ suggested a modification that would provide for maximum and minimum awards, and during the March 21 Call numerous tribes that expressed a concern that they would only be awarded hundreds of dollars under the current allocation method advocated for those modifications to be made. The Cherokee Nation has significant concerns with those suggestions, both because those allocation methods would change the purpose of the Indian Trust Agreement (in that they bear no relation to where the illegal VWs were, are or will be operated) and they would be fundamentally unfair to a larger tribe like the Cherokee Nation. More specifically, the numbers mentioned would result in a per capita award to some tribes that is more than a thousand times larger than the per capita award Cherokee Nation would receive.

Specifically, during the March 21 Call the smallest minimum award that was mentioned was \$25,000, and the largest maximum that was mentioned was \$500,000. Assuming those were adopted, that would mean the Cherokee Nation (with approximately half a million people living within its boundaries) would get at most about \$1 per person, while a tribe with 20 people living within its boundaries would get at least \$1,250 per person. On a per capita basis, that tribe would get a per capita award that is 1,250 times larger than the Cherokee Nation. Not only is that fundamentally unfair, it would change the purpose of the Indian Tribal Trust because it bears absolutely no relation to mitigating NOx where the illegal VW vehicles were, are, or will be operated. It also is wildly different than the state allocation, whose awards varied from population at most by a factor of 1.57.

Other suggestions made during the March 21 Call similarly have no nexus to the purpose of the Indian Trust Agreement to mitigate damage where the illegal VWs were, are, or will be operated. One tribe mentioned using the allocation method used by the Energy Efficiency and Conservation Block Grant Program. While the EECBG program may have used an allocation method that was appropriate and equitable for its goals, that program had no nexus with illegal VWs and thus sheds no light on what is an appropriate allocation here.

Another suggestion was to just divide the funds evenly amongst the 567 federally recognized tribes, resulting in an award of \$96,028.08 per tribe. This approach, again, bears no nexus to where the illegal VWs are. For example, since more than half of those tribes are in Alaska, more than \$27 million would go to Alaska.

V. A Per Capita Approach Should Be Used, And Any Modifications That Are Made Should Not Change The Purpose Of The Indian Trust Agreement

The Cherokee Nation believes that a per capita allocation, despite its flaws, is nevertheless the approach that will best be able to meet the purpose of mitigating NOx where the illegal VWs were, are, or will be operated. The Cherokee Nation is willing to consider

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modifications from a per capita approach that do not change the purpose of the Indian Trust Agreement.

For example, the Cherokee Nation believes it would be a fair approach in future funding cycles to allow tribes to receive a one-time minimum award of \$10,000.00 in addition to their per capita allocation. This amount should be more than sufficient to allow even the smallest of tribes to undertake a mitigation project.¹ Assuming that all tribes participate, the average per capita tribal award would be \$11.30 (\$54,447,921.22 divided by 4,818,740²). In the case of the tribe of 20 discussed above, it would receive award of around \$500 per person, which is 44 times as much as they would have received under a per capita method. While this ratio is significantly higher than what the states agreed to, it nonetheless may be an appropriate compromise.

The Cherokee Nation further believes that some of the suggestions it has made before, as well as some made during the March 21 Call, could help. As such, the Cherokee would request the following approach be followed:

1. Year one funding be distributed immediately as already provided for in the Indian Trust Agreement.
2. The number of remaining funding cycles be reduced from five to two, or at the most three.
3. In future funding cycles the allocation be amended to provide for a minimum one-time award of \$10,000 to all tribes that apply to be a beneficiary, with the remainder being allocated on a pre capita basis.³

¹ For example, there are many commercially available diesel generators that cost around \$2,000.

² Total population living in tribal areas is 4,818,740. The American Indian and Alaska Native Population: 2010; 2010 Census Briefs (Jan. 2012), at p. 13 Table 5, *available at* <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf> (last visited September 20, 2017).

³ The following language could be used to replace the current Section 5.0.5.2.3 of the Indian Trust Agreement:

In the event that the total amount of the approvable funding requests received on any submission deadline is more than the amount of funds available to be committed during the corresponding funding cycle, the Trustee shall not approve any funding requests pursuant to subparagraph 5.2.16, but rather shall: (i) allocate \$10,000.00 to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable funding request during the funding cycle and has not previously received an award under this Trust of more than \$10,000; (ii) in addition to the aforementioned \$10,000 award, if applicable, allocate to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable funding request during the funding cycle a share of the funds available during that funding cycle, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas); and (iii) publish on its public-facing website the tribal allocation within 60 Days after the funding request deadline for that funding cycle and notify each tribal applicant by letter and email that the Trustee is prepared to disburse this tribal allocation pursuant to subparagraph 5.2.16.1. In this event, such tribal allocation shall only apply to the oversubscribed funding cycle. To the extent an Indian Tribe has submitted a DERA Notice of Intent to Participate, such notice shall be used to calculate the total amount of funds requested under this subparagraph.

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4. Clarify that awards can be accumulated or carried over to allow for completion of a larger project instead of multiple smaller projects (including clarifying that the 15% ZEV limit applies to the total cumulative award, not to each annual award).

Thank you for your consideration of the Cherokee Nation's comments. Please do not hesitate to contact me with any questions.

Sincerely,

Sara Hill

Sara E. Hill
Secretary of Natural Resources
Cherokee Nation

Attachment

cc: Volkswagen Diesel Emissions
Environmental Mitigation Trust for
Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Email: RCrane@wilmingtontrust.com

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

QUAPAW TRIBE OF OKLAHOMA

P.O. Box 765
Quapaw, OK 74363-0765

(918) 542-1853
FAX (918) 542-4694

March 29, 2018

Office of Tribal Justice
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 2318
Washington, D.C. 20530

Re: March 16, 2018, U.S. Department of Justice Letter Concerning Possible Approaches to Allocation for an Oversubscribed Funding Cycle

Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices & Prods. Liab. Litig.*, 15-md-2672-CRB-JSC (N.D. Cal.).

Ladies and Gentlemen:

On behalf of the Quapaw Tribe of Oklahoma (the "Quapaw Tribe" or the "Tribe"), a Beneficiary under the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (the "Trust Agreement"), I am providing the following comments concerning possible approaches to allocation for an oversubscribed funding cycle. The Quapaw Tribe understands that for the first funding cycle under the Trust Agreement the total amount of eligible funding requests received by the Trustee greatly exceed the amount of funds available to be committed, which has resulted in an oversubscribed funding cycle for purposes of the funding agreement. The Tribe is also aware that if the current allocation formula under the Trust Agreement were to be applied, a large majority of the Beneficiaries in the first funding cycle would receive an insufficient allocation to fund any Eligible Mitigation Action, and that this situation could recur in future funding cycles.

In response to the specific questions set forth in the letter of Gina L. Allery, Deputy Director, Office of Tribal Justice, dated March 16, 2018, the Quapaw Tribe submits the following comments and discussion regarding possible approaches to addressing the issue of oversubscription:

1. *Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?*

The current allocation formula should not be retained, and should be modified, as it is unduly weighted to the total population—including Indian and non-Indian—of the beneficiary tribes' jurisdictional areas. In short, the present formula would distribute most of the trust funds to a very few tribes whose jurisdictional areas contain large populations of non-Indians. The

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total population number should not be a determining or a heavily weighted factor in the allocation formula.

Under the Trust Agreement, the formula is weighted “in accordance with the *total population living within each Indian Tribe’s tribal area*, according to the American Indian and Native American areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas.” (Dkt. 51-2 § 5.0.5.2.6, at 27 (emphasis added).) As originally envisioned, this criteria may have been intended to give some consideration to the relative size of the population in the area in which a tribal beneficiary is located. However, as the process has developed, this criteria has the effect of generating large allocations for tribes that happen to have larger jurisdictional areas—including reservations and former reservations—with large total Indian and non-Indian populations, regardless of the size of the population of the members or citizens of the beneficiary tribe. If the allocation continues to be weighted toward the total population of a Beneficiary’s area, then the formula will allocate most of the trust funds to only a handful of the qualified tribes.

For the formula to function consistently with the intent of the trust, the only potentially relevant population figure considered should be the tribal beneficiary’s membership or citizenship. The tribal membership number is relevant to a Beneficiary’s capacities, services, and needs. The non-tribal or non-Indian population in a Beneficiary’s jurisdictional area may be relevant to some extent to a tribe’s specific funding proposal. But, again, using total population as a weighting factor would result in an overallocation to a few tribes with large jurisdictional areas, and would make allocations to smaller tribes so small as to make their participation in the trust fund meaningless. Even then, the membership of a tribe and the size of its jurisdictional area should not be controlling.

The overriding focus of the allocation formula should be the qualified needs of a Beneficiary. Many tribes with smaller tribal populations and smaller jurisdictional areas have qualified needs within the purposes of the trust fund. In fact, these areas typically have the most impacted air quality and/or experience the greatest financial need. For example, the Quapaw Tribe, which has about 5,000 members and a reservation area in Oklahoma 57,000 acres (in addition to having approximately 123 acres of trust land in Kansas). The Tribe is therefore not among the largest Indian nations in the nation based on its tribal citizenship. However, the Tribe’s reservation is home to the Tar Creek Superfund Site, which is a top priority of the U.S. Environmental Protection Agency for clean-up, and the Tribe has a number of associated environmental conditions it must address. Despite its qualification under the Trust Agreement based on environmental conditions and need, the Tribe could receive inadequate funding to accomplish any meaningful action if total population continues to be given heavy weighting. The Tribe’s situation serves as a prime example of why no single beneficiary tribe should be denied an Eligible Mitigation Action because of its total population number alone.

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Because the Trustee cannot know the number of tribes that will submit a funding request in any given funding cycle, it makes more sense to divide equally the funding cycle funds among the Beneficiaries, and then distribute any excess funds in a manner based on detrimental air quality impacts/financial hardships.

2. *Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?*

To minimize the potential for oversubscription, a specific maximum amount any one Beneficiary can request in a funding cycle would be appropriate. The Quapaw Tribe believes an appropriate maximum would be a figure of \$500,000 in a funding cycle for any one Beneficiary. This is a sum that could be evenly distributed among the Beneficiaries, and that could result in meaningful actions by any individual tribe.

3. *Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?*

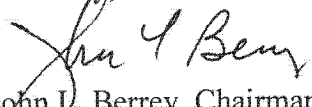
In keeping with the considerations relevant to issue No. 2 above, a recommended maximum amount any one Beneficiary could request for the duration of the Trust's first six funding cycles should be \$3,000,000 (or approximately five percent (5%) of the total Tribal Trust Allocation).

4. *Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate minimum amount?*

A minimum amount for an allocated share for each Beneficiary should not be established in the Trust Agreement. It is not clear at this point what a minimum Eligible Mitigation Project could cost, and so no appropriate minimum amount is apparent. A reasonable maximum amount any single Beneficiary could receive ensures that the Trust Fund is used effectively and as broadly as possible, but aside from that figure each specific proposal should be evaluated on its own merits.

We respectfully submit these comments and thank you for your continued consideration of our concerns.

Sincerely,


John L. Berrey, Chairman
Quapaw Tribe of Oklahoma

JLB/

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March 29, 2018
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cc: Tim L. Kent, Director, Environmental Department, Quapaw Tribe
Craig A. Kreman, Assistant Director, Environmental Department, Quapaw Tribe
Stephen R. Ward, General Counsel, Quapaw Tribe

From: Horan, Christopher <Christopher.Horan@SRPMIC-nsn.gov>
Sent: Monday, March 26, 2018 10:22 AM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: Hibbard, Carol <Carol.Hibbard@SRPMIC-nsn.gov>; King, Niccole <Niccole.King@srbmic-nsn.gov>
Subject: VW Settlement Allocation Comments - SRPMIC

Hello,
Below is the Salt River Pima Maricopa Indian Community Comments for the questions put forth regarding current allocation formulas.

1. Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

The current allocation formula should be replaced. SRPMIC does not support the EECGB allocation formula as it was developed for housing and housing characteristics. Funding should be allocated via a competitive process involving program capacity, project design, ability to complete project within a reasonable amount of time, etc. The distinction between mobile sources and stationary sources should be clarified and a focus should be on mobile source reductions as NOx emissions from mobile sources were the crux of the enforcement case and eventual settlement.

2. Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

A maximum amount per Beneficiary per funding cycle MAY be necessary. However, the end goal of the settlement is NOx reductions from mobile sources. Establishing a maximum amount per cycle would make it appear as though each tribe has similar program capacity, which is not the case. Tribes that were directly affected by 15 years of NOx noncompliance should be considered as primary recipients, particularly those with Tribal areas in ozone nonattainment areas. Maximum amounts, if employed, should be tiered based upon the direct effects of Volkswagen's noncompliance on a particular Tribal area.

3. Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

No, there should not be a maximum amount that a beneficiary can request/receive. Priority should be focused on viability of projects with regard to reduction of NOx emissions from mobile sources, as well as the capacity of the Tribe to complete projects within a reasonable timeframe. Should it be determined that evaluations need to be conducted to assess viability of projects, a neutral/knowledgeable third party, which may or may not be ITEP at Northern Arizona University, should conduct the evaluations. The evaluations should be open with the Beneficiary present to address concerns and answer questions.

4. Should the Trust Agreement establish a minimum amount for the allocated share for each Beneficiary? If so, what is the minimum amount?

There should not be a minimum amount established for the allocated share for each beneficiary. Tribal capacity varies significantly between tribes. Minimum amounts, if established, should be tiered based upon Tribal capacity.

SRPMIC may submit additional recommendations for any further discussions on current and future allocations.

If there are questions please feel free to contact me!

Sincerely,

Christopher "Chris" Horan
CDD-EPNR Division Manager
Community Development Department (CDD)
Environmental Protection & Natural Resources (EPNR)
Salt River Pima Maricopa Indian Community
Off: Two Waters, Bldg. B, 3rd fl., 10079 E. Osborn Rd., Scottsdale, AZ 85256
Mail: 10005 E. Osborn Rd., Scottsdale, AZ 85256

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Privileged and Confidential

March 26, 2018

TO: Gina Allery and Robert Mullaney, United States Department of Justice
FROM: Amy Mignella, Special Counsel, White Mountain Apache Tribe
RE: VW Settlement Funding Allocation

Please accept these comments and questions from the White Mountain Apache Tribe in relation to the VW Settlement funding allocation to tribal interests.

First, please note that the Tribe requested, in writing, clarification as well as answers to a variety of core funding questions, including the specific funding allocation methodology, at earlier points in this initial settlement distribution round. The Tribe was provided only minimal procedural guidance on required submissions, but not any concrete guidance or clarifications on how the settlement monies would be apportioned. The Tribe asked because it had concerns that should it not be able to provide its full request in the initial funding round that it would suffer some type of disadvantage. Although the Tribe did submit a qualifying funding request, it would have compiled documentation for additional needed equipment if timing beyond the limiting holiday deadline had been available.

Second, the Tribe has found the funding process only unpredictable and crisis-driven. Multiple times the Trustee directed the Tribe to provide information within an arbitrary and even next day turn around. Such a method bears no resemblance to proper trust or federal procedure in relation to tribal governments.

Regarding the settlement methodology, the Tribe was “certified” as a settlement recipient before the methodology was identified for revision. As such, the Tribe questions the Court’s discretion to modify the formulary at this juncture. The Tribe further now understands that the Department of Justice failed to describe with any specificity during the first discussion call set last week and the Tribe has also not seen any other record describing exactly how the “population” methodology was applied. In the absence of that information, the Tribe cannot concede that the method actually failed. The Tribe accordingly hereby requests a writing showing the use of the method and the resulting numbers for this settlement claimant group.

In the absence of that information and in order to meet the deadline stated during the first discussion call last week of today, March 26 (despite no written modification to the USDOJ written notice stating that the first comments were not “due” until March 28), the Tribe submits the following comments on additional funding parameters. The White Mountain Apache Tribe relies heavily on diesel vehicles and equipment for its routine governance activities, as well as its various enterprises, one of which is a logging and sawmill operation. These activities, combined with the topography and climate on the Tribe’s lands compel the extensive use of a spectrum of diesel equipment.

Much of the Tribe's diesel inventory is substantially out of date, with the emissions estimates completed showing more than an 85% emissions reduction with the replacement of its inventory with new, high performing units.

Unlike many other tribes in its region and elsewhere in the U.S., the White Mountain Apache Tribe has not recovered from the last recession. Impacts to the timber and tourism industries have lessened but the Tribe's remote location and continued challenges from climate change have reduced winter visitation to the Tribal ski enterprise, historically a substantial source of annual Tribal revenue. And the Tribe's single casino and resort center is similarly affected from reduced seasonal visitation.

So, the Tribe is not positioned similarly to other tribes seeking to replace equipment, and the Tribe will continue to rely on its old inventory until it no longer functions or alternate funding for replacements can be obtained. The Tribe requests that these factors be considered, in addition to on-reservation tribal enrolled population, for the distribution formulary.

In closing, the Tribe has used this writing opportunity to note its confusion and difficulty with the settlement process thus far. The Tribe very much appreciates the facilitation offered by ITEP and also by EPA staff this last week but urges the Court, the USDOJ and Trustee to only revise deadlines and procedural requirements in the claimant's favor, and to provide proper written notice at each instance. The Tribe considers this process as comparing substantially to a class action scenario, for which much legal precedent exists to draw upon; the Tribe considers such a model to be more reliable than what has been done thus far.

Thank you for your attention to this submission.

From: Gavin Hudson [mailto:mr.gavinhudson@gmail.com]
Sent: Wednesday, March 21, 2018 7:02 PM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: Genelle Winter <genelle.winter@gmail.com>
Subject: VW Settlement written comments following telephonic session on 3/21/18

To: Office of Tribal Justice
Re: Written Comments for VW Settlement Over-subscription Telephonic Session on 3/21/18

First of all, thank you for hosting a telephonic session seeking tribal input on this important matter.

On the question of whether or not there ought to be changes made to the allocation formula:

Yes, there should be changes made to allow for greater access for all tribes. Nearly 50% of all federally recognized tribes are within the state of Alaska. The majority of Alaskan tribes are very small and live in very remote areas. We live off the road system, we are dependent on diesel, and so we have a high cost of living and a high cost of doing business. Although our population and land base are small in comparison to tribes in other regions, our needs are large.

Clearly, there is a great demand for funding throughout Indian Country. In order to help everyone, I would like to request a maximum cap be implemented in the allocation formula. Eligible applications should get funded at the amount that is approved under the cap. If there is an over-subscription, you should allocate the funds to all eligible applications, in chronological order of when the application is received, until the funds run out. Those applications not funded in the current cycle should be given priority in the following funding cycle. Priority should be given to first-time recipients, again, to give every tribe, a chance to make a meaningful difference in their community. This alternative method would eliminate the need for consideration of population.

For example, if our tribe was able to utilize these settlement funds to replace just two dirty diesel vehicles, our situation would be dramatically improved. A max cap of \$250,000 could allow the need described in this scenario to be addressed.

Thank you for your time and consideration.

Gavin Hudson
Grant Coordinator
Metlakatla Indian Community,
Annette Islands Reserve, Alaska

P.O. Box 8
Metlakatla, AK 99926

C: [\(206\) 327-3075](tel:2063273075)



Tanana Chiefs Conference

122 1st Avenue
Fairbanks, AK 99701
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www.tananachiefs.org

March 27th 2018

Office of Tribal Justice
Dept. of Justice
950 Pennsylvania Ave NW, Room 2318
Washington DC 20530

Dear Office of Tribal Justice,

Tanana Chiefs Conference is the nonprofit tribal consortia representing 42 communities and 37 federally recognized tribes across Alaska's sub-arctic interior. We assist our communities with various programs aimed at increasing tribal sovereignty, tribal independence and economic development across our region. We have been listed as the Lead Agency for two eligible tribes that have been awarded beneficiary status from the VW Environmental Mitigation Trust Settlement. On behalf of those tribes - specifically Beaver Village and Stevens Village who have both submitted as beneficiaries under the VW environmental mitigation trust settlement - we are submitting the below comments in response to the DOJ's questions to Tribal Leaders Re: the Environmental Mitigation Trust Formula dated 3/16/18.

Q1: Should the current Allocation Formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

A1: **No**, The current formula significantly disadvantages smaller tribes. Case in point is how the current formula was allowed to pass through the comment period unknown to us; smaller tribes have very small staffs and are unable to respond to each and every request for tribal consultation that comes out. Larger tribes with more money and staff are more able to respond to these comments and obviously have no issue with the allocation formula because it benefits their tribal members.

This issue of fairness was discussed at length in 2009 and 2010 when American Recovery and Reinvestment Act (ARRA) Funding was offered to Indian Country through the Energy Efficiency Conservation Block Grant (EECBG) program. We request the DOJ to look into the EECBG formula as it accomplished the following important goals:

- a. Equal geographic dispersion
- b. Each tribe has a minimum that they are allocated
- c. Payouts were prioritized from smallest to largest
- d. Larger tribes are able to come back in later rounds if funding remains
- e. Any tribe who does not apply by a certain year of the program gives up its right to apply and the money allocated for that tribe goes back into the available funding

Q2: Should the Trust Agreement be amended to specify a max amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate max amount?

A2: **YES**, Similar to the majority of competitive solicitations that the federal government offers, there should be a maximum amount that can be requested. Given the size of the first round and the scope of



Tanana
Chiefs
Conference

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the work, we believe the maximum amount available should be \$500k for any individual tribe. This allows smaller tribes the opportunity to apply. The maximum limit must be setup in such a way that a few large tribes with a lot of infrastructure cannot take the full amount of available funds thereby disadvantaging smaller tribes.

Q3: Should the Trust Agreement establish a maximum amount that any one beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate max amount?

A3: **YES**, Similar to the majority of competitive solicitations that the federal government offers there should be a maximum total amount that can be requested by one tribe. Given the size of the first round and the scope of the work, we believe the max amount available from the first 6 funding cycles should be \$1 Million for any individual tribe.

Q4: Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate min amount?

A4: **YES**, Similar to the majority of competitive solicitations that the federal government offers there should be a minimum amount that can be requested. The minimum amount to complete a project that is worthwhile is \$50k/tribe, this would also ensure that there is money in the \$55 Million tribal allocation to serve the needs of all federally recognized tribes.

The ultimate issue with the DOJ process under this Trust Settlement is that large tribes had no issue with the proposed method of allocation because the system favored large tribes. Small tribes are significantly disadvantaged because of their small populations and limited resources and did not have the capacity to weigh in during consultation with an alternate formula. The resulting system, which we now have for the allocation, continues to disadvantage small tribes and we strongly encourage the DOJ to amend this formula.

Ana Bassee'

A handwritten signature in cursive script, appearing to read 'Ana Bassee''.

Dave Messier
Rural Energy Coordinator
Tanana Chiefs Conference
122 1st Ave suite 600
Fairbanks, AK 99701



www.ntaatribalair.org

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National Tribal Air Association

P.O. Box 15004

Flagstaff, AZ 86011-5004

Executive Committee

April 2, 2018

Region 1
Jan Paul
Penobscot Nation

Region 2
Angela Benedict
Secretary
Saint Regis Mohawk Tribe

Region 4
Scott Hansen
Treasurer
Catawba Indian Nation

Tiffany Lozada
Poarch Band of Creek Indians

Region 5
Brandy Toft
Vice-Chairperson
Leech Lake Band of Ojibwe

Joy Wiecks
Fond du Lac Band of Lake
Superior Chippewa

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Craig Kreman
Quapaw Tribe of Oklahoma

Jeremy Fincher
Sac and Fox Nation

Region 7
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Sac and Fox Nation of Missouri
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Prairie Band Potawatomi Nation

Region 8
Randy Ashley
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Kootenai Tribes

Linda Weeks-Reddoor
Fort Peck Assiniboine-Sioux
Tribes

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Wilfred J. Nabahe
Chairman
Colorado River Indian Tribes

John C. Parada
Augustine Band of Cahuilla
Indians

Region 10
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Kootenai Tribe of Idaho

Maggie Sanders
Nisqually Indian Tribe

Alaska
Brian Holter, Jr.
Klawock Cooperative
Association

Sue Flensburg
Bristol Bay Native Association

Gina Allery
Deputy Director
Office of Tribal Justice
United States Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

Re: Comments from the National Tribal Air Association regarding the U.S. Department of Justice and the Environmental Protection Agency invitation to confer on a method for allocating annual funding in the Tribal Allocation Subaccount for Eligible Mitigation Actions when approvable funding requests from Beneficiaries exceed the available funding for a funding cycle of the Trust pursuant to Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

Dear Ms. Allery:

The National Tribal Air Association (NTAA) is pleased to submit these comments regarding the U.S. Department of Justice (USDOJ) and the Environmental Protection Agency (EPA) invitation to confer on a method for allocating annual funding in the Tribal Allocation Subaccount for Eligible Mitigation Actions when approvable funding requests from Beneficiaries exceed the available funding for a funding cycle of the Trust pursuant to *Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.)*.

The NTAA is a member-based organization with 128 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand that interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

In response to the questions raised in several calls hosted by your office on March 21st and March 27th, the members of the NTAA Executive Committee recommend that the current allocation formula should not be retained; therefore, the NTAA recommends the following factors be considered for a replacement formula:



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National Tribal Air Association

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1. Utilization of the VW Settlement Tribal Sub-Account should be prioritized in Tribal lands designated as unclassified, serious/non-attainment, where Tribes have asserted their own designations, and Maintenance Area Selections.
2. The Trust Agreement should fund Tribal projects where it can be demonstrated that NOx reduction will occur. There should not be a census based allocation factor due to the following: there is a lack of sufficient data, some Tribes do not participate in the census, and it is inherently inaccurate.
3. Any one Beneficiary should not exceed 2.5% of the total corpus of the Tribal trust in any single funding year and any single Beneficiary should not exceed a maximum of 5% of the total corpus of the Tribal trust for the life of the trust, each Beneficiary should receive a minimum allocation to support a single “project” or minimum “actionable amount” necessary to complete an Eligible Mitigation Action.
4. If a Beneficiary receives an allocation under the actionable amount or if a potential Beneficiary does not receive funding in a year that they applied based on the allocation formula, they should receive priority funding support in subsequent allocation years when/if they re-apply.
5. The Trust Agreement should allow a Tribe to bank an allocated amount in a funding cycle with the Trust and add that amount to its allocation in the next funding cycle. This banking option would apply only for the first four funding cycles.
6. Where Tribes have made a case for the need to protect or allow justification for present or future threats to air quality regardless of designation.

In conclusion, the NTAA Executive Committee recommends an annual review from either the NTAA EC or the Tribal Advisory Council discussed within the Indian Tribe Trust Agreement.

Thank you for your consideration of the aforementioned comments by the members of the NTAA Executive Committee.

Sincerely,


Wilfred J. Nabahe
Chairman
National Tribal Air Association

Privileged and Confidential

April 3, 2018

Office of Tribal Justice
U.S. Department of Justice
Washington, D.C.

RE: Volkswagen Settlement, Tribal Distribution Comments, White Mountain Apache Tribe (2)

To Whom It May Concern:

Please accept these additional comments of the White Mountain Apache Tribe (Tribe) in relation to the VW Settlement distribution to tribal claimants. This is the second set of comments submitted by the Tribe on this issue.

Please consider the following comments as supplemental to the Tribe's prior submission. The Tribe provides these additional remarks generally and in response to the March 28 notice provided by the US DOJ on this matter.

1. The Tribe urges the Court, US DOJ and the Trustee to utilize a formulary that consistently, equitably and defensibly apportions the Settlement funds to tribal recipients. As such, the method utilized for such purpose must be consistent across the entire fund and not variable in each/any funding cycle. Deviation from this parameter will lead to randomized results, creating inequity between recipients. As a fixed total settlement amount is already determined, each cycle must evenly apportion from that total. If this cannot be accomplished in a particular funding round for some reason, the funding should be delayed, or a later adjustment be made to restore equity across the entire process. For this reason, the Tribe objects to any formulary that is in any way distinct from one funding round to another.
2. The Tribe urges the use of a formulary that remains based on population (as is already called out). The Tribe further maintains that such a formulary can be used with an equitable result. As the Tribe does not have any detail showing the specific use of the formulary thus far for this funding round (even with respect to the dollar amount it was individually calculated to receive), it can comment only on the example provided by the US DOJ via ITEP; that data displays a population-based methodology that guarantees funding distortions from one funding cycle to the next. This is evident, for example, as the data reveals a failure to correct for differing total applicants in each instance. As such, should a tribe apply during a smaller pool funding cycle, it could receive a larger proportionate share of funding than a tribe that applies during a more active funding cycle. The possibility for such advantage variations must be eliminated.
3. Similar to a class action, tribes could be solicited by written notice by US DOJ or the Trustee regarding their intention to participate in the Settlement. After a proper response time (e.g., 60 days), tribes that have not replied could be excluded. Thereafter, the Settlement fund would be restricted to only those responding tribes and a population basis for funding distribution accordingly limited.
4. The population approach could be refined by adding *pro rata* refinement factors. Such factors should include the extent of a tribe's diesel reliance, fleet/equipment age, and diesel fleet/inventory size. Such criteria will funnel Settlement monies such that the largest air quality benefits result, consistent with the premise of the Settlement, while still honoring a population allocation basis.

5. The Tribe urges the transparency of the settlement calculations, consistent with the transparency requirements of the Trust Agreement. As tribal recipients are required to make their Settlement participation and resulting resource benefits publically available, the US DOJ and Trustee must do the same with respect to benefit distribution calculations.
6. The Tribe supports further discussion of refinement of the original "population" basis for funding distribution and accordingly encourages the allowance of additional time in dialogue for that purpose.

Thank you for the opportunity to submit this additional input in an effort to assure meritorious Settlement distribution.

Amy T. Mignella, Esq.
Special Counsel
White Mountain Apache Tribe



COQUILLE INDIAN TRIBE

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Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

Sent Via electronic mail to OTJ@usdoj.gov with attachment.

March 30, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

Re: Comments on the distribution of the VW Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

Dear Office of Tribal Justice:

Below are our comments on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries established pursuant to a partial settlement of In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

1. Ceiling set by funding request - The ceiling for an allocation for a Tribe should be set by the amount in the Tribe's funding request submitted to the Trustee for the first funding cycle.

We disagree. Ceiling should be set in a way to allow more Tribes to get funding. Funding will not go very far if a few Tribes apply for multi-million dollar grants.

2. Allocation formula for first funding cycle - The Trust Agreement should apply the following allocation formula for the oversubscribed first funding cycle: 50% of the available funding in the first funding cycle should be divided equally among the 26 Beneficiaries with an approvable funding request (subject to the ceiling in item 1). The remaining funding shall be divided among the 26 Beneficiaries based on population, weighted in accordance with the total population living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas) (the "population-based formula").

We Agree. We prefer a 70 – 30 Split as this is common in other funding arrangements with Tribes. 70% divided equally between all applicants and 30% divided by formula.

3. Banking option (i.e., accumulation of allocated sums over the first four funding cycles) - The Trust Agreement should allow a Tribe to bank an allocated amount in a funding cycle with the Trust and add that amount to its allocation in the next funding cycle. This banking option would apply only for the first four funding cycles.

We agree. We should be allowed to bank our allocated amount to fulfill the intent of the mitigation.

4. *Initial funding request and allocated amount - Due to the oversubscribed first funding cycle, there is a mismatch between the amount of funding requested by most of the 26 Beneficiaries and the likely allocation to those Beneficiaries. Accordingly, after the Trustee applies the allocation formula for the first funding cycle, the Trustee should provide notice to all Beneficiaries of the allocation for each Beneficiary. If a Beneficiary's funding request exceeded its allocation, the Trustee should request the Beneficiary to: (1) submit, within 30 days after the Trustee's notice, a revised funding request (Appendix D-4: Beneficiary Eligible Mitigation Action Certification) setting out what projects it would undertake given the allocated amount; (2) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (3) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Tribe to allow it to add that amount to an allocation in one of the next four funding cycles.*

We agree. We will most likely prefer to opt to bank the allocated amount.

5. *Maximum funding request - The Trust Agreement should establish a maximum amount that any one Beneficiary can request in any funding cycle. If so, what is an appropriate maximum amount for any given funding cycle?*

We agree. The maximum amount to any one beneficiary should be around the \$500K range.

6. *Maximum number of funding requests - As an alternative to a maximum amount for a funding request, the Trust Agreement should limit the number of times any one Beneficiary can submit a funding request in the first five funding cycles. An appropriate limit would be three funding cycles of the first five funding cycles.*

We disagree. The only way to possibly avoid overallocation in any cycle is to cap the maximum amount of a funding request. Multi-million dollar requests prevent smaller Tribes from applying.

7. *Number of funding cycles - The Trust Agreement should reduce the number of initial funding cycles to five or fewer. While this would intensify application-related work in the near term, it could result in an overall reduction of time and effort, minimize the need for banking, and put the Trust's funds to work sooner.*

We agree.

8. *Eligibility for additional funding cycles - The Trust Agreement should provide that all federally-recognized Tribes that have submitted a certification for beneficiary status form (Appendix D-3 of the Trust Agreement) and have been determined a Beneficiary can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the Tribe wants to participate in the funding cycle.*

We agree.

9. *Deadline for second funding cycle - The Trust Agreement should postpone the application deadline for the second funding cycle until December 1, 2018. Pursuant to the Partial Consent Decree, Volkswagen will have fully funded the Trust Fund by that date, increasing the amount of funds available for the second funding cycle.*

We agree.

10. Allocation formula for additional funding cycles - As in the first funding cycle, the Trust Agreement should provide that half of the available funding in each of the second through fifth or sixth funding cycles will be split equally among the eligible Beneficiaries in that funding cycle and half by the population-based formula.

We disagree. This is not an equitable method for smaller Tribes. Again we would recommend a traditional 70/30 split.

11. Minimum actionable amount - The Trust Agreement should set a minimum "actionable amount," i.e., an amount that would be necessary to complete an Eligible Mitigation Action. If a Beneficiary receives an allocation under the actionable amount, the Trust Agreement should provide that Beneficiary with two options: (1) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (2) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Beneficiary, allowing it to add that amount to an allocation in a future funding cycle. We seek input on the concept of an actionable amount and an appropriate minimum amount.

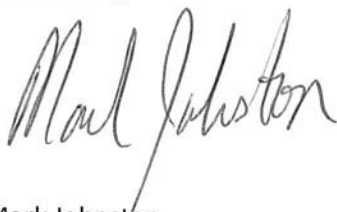
We agree. There should be a minimum actionable amount or a method to bank the minimal amount

12. Modification of deadlines for Beneficiary designation by the Trustee and United States' notice of objection - Subparagraphs 4.01 and 4.02 of the Trust Agreement did not take into account that Indian Tribes are afforded the possibility to file a certification for beneficiary status under the Trust Agreement at any time. The Trust Agreement should be amended to require the Trustee to file its notice of Beneficiary designation on a date certain after the deadlines for the second through fifth funding cycles. The time for the United States to file any notice of objection would then follow 30 days after the Trustee's designation.

We agree.

Thank you for taking the time to listen and incorporate our comments into the VW mitigation allocation method.

Shuenhalni,

A handwritten signature in black ink that reads "Mark Johnston". The signature is written in a cursive, flowing style.

Mark Johnston

Executive Director,
Coquille Indian Tribe



**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT OFFICES**

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April 3, 2018

RE: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability
Litigation

Dear Madam or Sir:

This letter is sent on behalf of the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians ("CTCLUSI") on the allocation of settlement funds associated with the In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation matter.

Due to the total amount of approvable funding requests received by the Trustee greatly exceeded the amount of funds available to be committed for the first funding cycle, which is called an "oversubscribed funding cycle" in the Trust Agreement. The Trust Agreement sets out an allocation formula that would allocate a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within each Indian Tribe's tribal area according to the 2010 Census, including reservations, off-reservation trust lands, and statistical areas.

For the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians, the 2010 census data does not reflect our current population or landbase. CTCLUSI's population has increased by over 100% and our landbase has grown by 2,600% since the 2010 census was taken. It also is important to mention that CTCLUSI's population, landbase acreage and dispersal as a Tribe is a direct result of Euro-American contact, politics, reservations, termination and Indian schools.

CTCLUSI suggests that the current "oversubscribed funding cycle" formula be replaced by a formula with more encompassing variables. These variables could include:

- Capacity – ability to complete project/request;
- Maximum amount requested per application year (\$200,000);
- No minimum funding request; and
- Competitive project proposal (work-plan, objective, outcome, reporting).

We appreciate your consideration of our application and comments on utilization of the Settlement Funds.

Sincerely,

Amanda Craig
Air & Water Specialist
Department of Natural Resources
Conf. Tribes of Coos, Lower Umpqua & Siuslaw Indians

From: Jaramillo, Francine <general.counsel@isletapueblo.com>
To: OTJ
CC: Governor J. Robert Benavides
Sent: 4/3/2018 11:07:22 AM
Subject: Distribution of Tribal Allocation Subaccount

Ms. Allery:

As a follow-up to the March 27, 2018 Discussion Session regarding the conceptual approaches to allocation for the oversubscribed funding, the Pueblo of Isleta submits the following comments. The Pueblo would be amendable to the second approach with 50% of the available funding to be distributed among the 26 Beneficiaries and the remaining funding to be based on the Beneficiaries' population. The Pueblo would also support the option to bank its funding allocation over subsequent funding cycles. We would also like to see the eighth approach implemented which would allow a Beneficiary to qualify for consideration for funding in additional funding cycles by submitting a notice stating that it wants to participate in a funding cycle. Finally, the Pueblo agrees that moving the second funding cycle deadline is a good idea given the delays experienced with this first funding cycle.

Thank you for your consideration. Please contact me if you have questions.

Francine

Francine M. Jaramillo, General Counsel
Office of the Governor, Pueblo of Isleta
P.O. Box 1270 Isleta, New Mexico 87022
Phone: (505) 869-9716
Fax: (505) 869-4236
Email: general.counsel@isletapueblo.com

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From: Jean McInnis <jmcinnis@moheganmail.com>
To: OTJ
CC: Kevin Meisner
Sent: 4/3/2018 3:59:37 PM
Subject: FW: Mohegan Comments in response to 3/27/18 discussion session

To: Gina Allery, Deputy Director, Office of Tribal Justice
From: Jean McInnis, Environmental Protection Administrator, Mohegan Tribe of Indians of Connecticut
Date: April 3, 2018
Re: Tribal Allocation Subaccount discussion additional comments

Dear Deputy Director Allery:

The Mohegan Tribe of Indians of Connecticut ("Mohegan Tribe") submits the following additional comments after participating in the March 27, 2018 Discussion Session regarding finding a solution to tribal oversubscription in the first funding cycle of the Tribal Allocation Subaccount for the Volkswagen Settlement.

1. With regard to whether a ceiling should be set based on a tribe's current funding request, we do not agree with this because the tribes could not have anticipated the current oversubscription conditions and therefore such a ceiling would be arbitrary.
2. With regard to allocation formulas, we have no objection to 50% of the available funding in the first cycle divided equally amongst the 26 tribes, with the remaining 50% allocated based upon a formula. As stated in our previous comments, we do not agree with the 2010 census data as the sole determinant of allocation, and would urge you to consider supplementing 2010 census data with actual traffic counts, data from the tribes regarding current statistical areas and impacted populations, and whether the tribe is located in a NOx non-attainment area.
3. With regard to the banking option, in our view this will complicate the process, and also take away from tribes who have not applied for status. In our view, if you award each tribe in the current cycle 50% of the available funding with the remaining 50% allocated based on a formula, each of the 26 tribes will be able to complete a meaningful project. The remaining cycles could then be reserved for the remaining 547 Indian tribes who did not apply in the first funding cycle.
4. With regard to revised project requests for the first cycle due to oversubscription, we have no objection to this concept, and also have no objection to a tribe opting out of the first cycle with the allocated amount being returned to the pool. Our view on the banking option is above.
5. We have previously stated our position on maximum funding amount.
6. With regard to maximum number of funding requests, please see number 3 above. We believe one approved request per tribe should be sufficient.
7. We do not believe there is any reason to reduce the number of funding cycles. It may take some tribes the additional time to prepare their requests.
8. We agree that the deadline for the second funding cycle should be extended to avoid the issue of an underfunded cycle.
9. We agree to modification of future deadlines for Beneficiary designation by the Trustee and United States' notice of objection based on the fact the tribes may apply for beneficiary status at any time.

Thank you for the opportunity to provide these comments. We would be happy to follow up with additional information if needed.

Sincerely,

Jean McInnis
Environmental Protection Administrator

From: Swallows, Donna <Donna.Swallows@gtbindians.com>
To: OTJ
Sent: 3/27/2018 4:26:16 PM
Subject: FW: Volkswagen Tribal Beneficiary Settlement Update telephonic sessions - March 21, 2018

Please send the most recent email/documents. Thank you

Donna M. Swallows
Senior Account/Self Governance Coordinator
Phone: 231.534.7130 Fax: 231.534.7861
Donna.swallows@gtbindians.com

From: Woods, Becky
Sent: Monday, March 19, 2018 2:04 PM
To: Swallows, Donna <Donna.Swallows@gtbindians.com>; Petoskey, John, F <John.Petoskey@gtbindians.com>
Cc: Kelley, Mary J <Mary.Kelley@gtbindians.com>
Subject: FW: Volkswagen Tribal Beneficiary Settlement Update telephonic sessions - March 21, 2018

Schedule

The schedule for the telephonic sessions and for providing any written comments is as follows:

Wednesday, March 21, 2018: Discussion Session 3:00 pm Eastern
Link to register for the call and receive the call-in information: <http://dpreregister.com/10118206>

Wednesday, March 28, 2018 for written comments

Tuesday, March 27, 2018: Discussion Session 4:00 pm Eastern
Link to register for the call and receive the call-in information: <http://dpreregister.com/10118234>

Tuesday, April 3, 2018 for written comments

Please note that you will be asked to provide your name and Tribal affiliation when you register for a discussion session. In addition, we will accept written comments relating to the first discussion session until the close of business on Wednesday, March 28, 2018, and written comments relating to the second discussion session until the close of business on Tuesday, April 3, 2018. Please submit any written comments via email to OTJ@usdoj.gov or (if necessary) via regular mail to:

From: Manzano, Gail
Sent: Monday, March 19, 2018 1:47 PM
To: McClellan, Thurlow "Sam" <Thurlow.McClellan@gtbindians.com>; Vargo, Kimberly <Kimberly.Vargo@gtbindians.com>; Rohl, Jane <Jane.Rohl@gtbindians.com>; Arroyo, David <David.Arroyo@gtbindians.com>; Wilson, Mark <Mark.Wilson@gtbindians.com>; Bird, Percy, J <Percy.Bird@gtbindians.com>; Shomin, Tom <Tom.Shomin@gtbindians.com>; Pelcher, Mary <Mary.Pelcher@gtbindians.com>; Winslow, Doris <Doris.Winslow@gtbindians.com>; Woods, Becky <Becky.Woods@gtbindians.com>; Pelcher, Theresa <Theresa.Pelcher2@gtbindians.com>; Alber, Leanne <Leanne.Alber@gtbindians.com>; Clement, Elaine <Elaine.Clement@gtbindians.com>
Cc: Zotigh, Sonya <Sonya.Zotigh@gtbindians.com>
Subject: FW: Volkswagen Tribal Beneficiary Settlement Update

FYI – Please note the schedule for the phone sessions and share as necessary. Megwetch.

From: Frank Ettawageshik <fettawa@charter.net>

Sent: Monday, March 19, 2018 1:17 PM
To: Aaron Payment <aaronpayment@saulttribe.net>; Bryan Newland <bnewland@baymills.org>; James Williams, Jr. <jim.williams@lvdtribal.com>; Jamie Stuck <jstuck@nhbpi.com>; John Warren <John.Warren@Pokagonband-nsn.gov>; Kenneth Meshiguad <tyderyien@hannahville.org>; Larry Romanelli <lromanelli@lrboi-nsn.gov>; Mike McCoy <mmccoy@saulttribe.net>; Regina Gasco Bentley <chairman@ltbbodawa-nsn.gov>; Ronald F. Ekdahl <rfekdahl@sagchip.org>; Scott Sprague <scott.Sprague@glt-nsn.gov>; McClellan, Thurlow "Sam" <Thurlow.McClellan@gtbindians.com>; Warren Swartz <tcchris@kbic-nsn.gov>
Cc: Ashley Macklin <amacklin@saulttribe.net>; Bill Brooks <bbrooks@nhbpi.com>; Bob Moody, Jr. <Bob.Moody@pokagonband-nsn.gov>; Caitlin Rollins <caitlinrollins@lrboi-nsn.gov>; Candice Blocher <cblocher@saulttribe.net>; Candy Tierney <kathryntierney365@hotmail.com>; Chad DePetro <cdepetro@bmic.net>; Christine Lanning <clanning@nhbpi.com>; Damian Fisher <grayskypollc@gmail.com>; Danielle Webb <danielle@kbic-nsn.gov>; Dave Anthony <Anthony@hannahville.org>; Ed Pigeon <edpigeon@glgaming.org>; Elise McGowan-Cuellar <elisemcgowan-cuellar@lrboi-nsn.gov>; Elizabeth Cook <lcook@nhbpi.com>; G Martin <gmartin@lvdtribal.com>; Manzano, Gail <Gail.Manzano@gtbindians.com>; Gary Paul DiPiazza <gdipiazza65@gmail.com>; Homer Mandoka <hmandoka@nhbpi.com>; James Nye <james.nye@sbcglobal.net>; Jennifer Dale-Burton <jdburton@saulttribe.net>; Jennifer Misegan <tcjennifer@kbic-nsn.gov>; Jim Bransky <jbransky@ltbbodawa-nsn.gov>; Jo Silvia <jo.silvia@pokagonband-nsn.gov>; Joanne Carr <jcarr@saulttribe.net>; John Wernet <jwemet@saulttribe.net>; Karrie S. Wichtman <kwichtman@rosettela.com>; Kathleen Bowers <kbowers@lrboi-nsn.gov>; Kathy Buckley <kathleen.buckley@glt-nsn.gov>; KBIC Tribal Council <Council@kbic-nsn.gov>; Kenneth W. K. Akini <ken.akini@lvdtribal.com>; Vargo, Kimberly <Kimberly.Vargo@gtbindians.com>; L. John Lufkins <ljohn@itcmi.org>; Lana Causley <lcausley@saulttribe.net>; Linda Gokee <LGokee@LTBBODAWA-NSN.gov>; LTBB Tribal Council <tribalcouncil@ltbbodawa-nsn.gov>; Matthew Wesaw <matthew.wesaw@pokagonband-nsn.gov>; Michele Portman-LaCount <MLaCount@LTBBODAWA-NSN.GOV>; Phyllis Davis <phyllis.davis@glt-nsn.gov>; Pokagon Band Tribal Council <tribal.council@pokagonband-nsn.gov>; Rebecca Fisher <RFisher@LTBBODAWA-NSN.gov>; Rebecca Liebing <rebeccaliebing@lrboi-nsn.gov>; Robyn Burlingham <rburlingham@nhbpi.com>; Saginaw Chippewa Tribal Council <tribalcouncil&staff@sagchip.org>; Scott Brewer <sbrewer@fourwindscasino.com>; Sharon Teeple <steeple@baymills.org>; Zotigh, Sonya <Sonya.Zotigh@gtbindians.com>; Thomas St. Dennis <tjsaint@aol.com>; Tony Day <tday@nhbpi.com>
Subject: Fw: Volkswagen Tribal Beneficiary Settlement Update

FYI

Frank Ettawageshik
Executive Director, United Tribes of MI
517-802-8650
Sent from my BlackBerry - the most secure mobile device

From: Mehrdad.Khatibi@nau.edu
Sent: March 19, 2018 11:09 AM
To: ITEPNEWS@LISTS.NAU.EDU
Reply-to: Mehrdad.Khatibi@nau.edu
Subject: Volkswagen Tribal Beneficiary Settlement Update

Volkswagen Tribal Beneficiary Settlement Update

Please find the attached letter addressed to Tribal Leaders from the U.S. Department of Justice's Office of Tribal Justice. This letter was sent to all federally recognized tribes.

As the letter indicates, DOJ and EPA are inviting Tribal Leaders to discuss several issues related to the allocation of VW Settlement funds to Tribal Beneficiaries for an oversubscribed funding cycle, and have set up a schedule of calls and deadlines for written comments. Registration is required for each call being scheduled.

The schedule for the telephonic sessions and for providing any written

comments is as follows:

- - Wednesday, March 21, 2018: Discussion Session 3:00 pm Eastern
Link to register for the call and receive the call-in
information: <http://dpreister.com/10118206>
Wednesday, March 28, 2018 for written comments

- - Tuesday, March 27, 2018: Discussion Session 4:00 pm Eastern
Link to register for the call and receive the call-in
information: <http://dpreister.com/10118234>
Tuesday, April 3, 2018 for written comments

If you have questions or have trouble using the links to register, please contact the Office of Tribal Justice at OTJ@usdoj.gov.

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**GRAND PORTAGE BAND OF CHIPPEWA
ENVIRONMENTAL DEPARTMENT
P.O. Box 428, Grand Portage, MN 55605**

U.S. Department of Justice
Office of Tribal Justice
Room 2318, RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

April 2, 2018

Dear Office of Tribal Justice,

Thank you for the opportunity to comment on the Trust Agreement allocation formula. The Grand Portage Band of Chippewa is a federally recognized Indian tribe established under the 1854 Treaty of LaPointe.¹ The Grand Band of Chippewa is part of a collective of 6 tribes called the Minnesota Chippewa Tribes (MCT). The MCT is comprised of six tribes in Minnesota with a combined total membership of around 12,000. However Grand Portage's tribal membership itself is less than 1,500 people and a majority of our tribal membership live off reservation. The current population who live on reservation is around 250 people.

The current allocation formula is based off of 2010 census data and it was not made clear if this included only tribal people within the reservation or all the people who live within the reservation including non-tribal people. Our tribal membership is small compared to that of other tribes throughout the United States. Our concern with the allocation formula is that, it favors tribes with larger memberships and does not take into account those who live off reservation. Smaller tribes save a few often have a hard time getting funding due to location and amount of people it will impact.

Grand Portage proposes that the Trust Agreement allocation formula based on population be replaced with a competitive grant that imposes a minimum, maximum and a lifetime amount awarded. Based off of research we propose a minimum of \$50,000, a maximum of \$500,000 and \$2,000,000 over the lifetime of the funding cycles.

Sincerely,

Vallen Cook
Grand Portage Air Quality Specialist

¹ Treaty with the Chippewa, 1854, 10 Stat. 1109, in Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, Vol. II (Washington: Government Printing Office, 1904), available on-line at <http://digital.library.okstate.edu/kappler/Vol2/treaties/chi0648.htm> (last visited Mar. 10, 2014).

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Putting Our People First”

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

April 2, 2018

United States Department of Justice
Office of Tribal Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, D.C. 20530
OTJ@usdoj.gov

Re: Written comments prepared by the Gila River Indian Community regarding the Volkswagen Settlement discussion sessions.

Dear Deputy Director Allery,

The Gila River Indian Community (the “Community”) hereby respectfully submits the following comments regarding the Volkswagen Settlement discussion sessions.

I. Gila River Indian Community

The Community is a federally-recognized Indian tribe composed of the Akimel O’otham (Pima) and Pee-Posh (Maricopa) tribes. The total enrollment of the Community is approximately 20,000 members. The Gila River Indian Reservation (the “Reservation”) is located in southern Arizona and encompasses nearly 600 square miles in Pinal and Maricopa counties. The Community is both an urban and rural Community and shares a border with the cities of Phoenix, Chandler, Coolidge, Casa Grande, Gilbert, Maricopa, and Queen Creek.

II. Comments on the Volkswagen Settlement Discussion Sessions

On March 16, 2018, the Department of Justice (“DOJ”) issued a letter for the first phone discussion stating it would like to discuss possible approaches to allocation for an oversubscribed funding cycle. In response to this first discussion, the Community believes that the current formula should be retained provided the maximum amount received by any one beneficiary is \$800,000 per funding cycle and \$4,000,000 lifetime, with 6 cycles of banking. Regarding the banking option, tribes should be allowed to bank funds for the first 6 years with the requirement that all funds be expended within two years after the Round 6 allocations. However, the Community does not recommend that the Trust Agreement establish a minimum amount for an allocated share for each beneficiary.

On March 27, 2018, the DOJ issued a second letter providing additional conceptual approaches to allocation for an oversubscribed funding cycle that were raised by Beneficiaries during the first phone discussion. In response to this second discussion, the Community does not support a ceiling for an allocation for a tribe as set by the amount in the tribe's funding request submitted to the Trustee for the first funding cycle. The Community also does not support the proposed revision to apply an allocation formula of 50% of the available funding in the first funding cycle as divided equally among the 26 beneficiaries with an approved funding request, subject to the aforementioned ceiling. However, the Community finds that a value of 10% is acceptable, provided that there are 6 cycles of banking available, an \$800,000 funding cycle, and a \$4,000,000 lifetime maximum per tribe.

Similarly, regarding the proposal to revise the allocation formula to provide half of the available funding in each of the second through fifth or sixth funding cycles as split equally among the eligible beneficiaries in that funding cycle and half by the population-based formula, the Community again recommends that instead a value of 10% of the award amount be split among tribes, with the remaining divided based on population and/or with preferential funding for tribes located in or adjacent to an Ozone Nonattainment Area. Again, this option should include the maximum amount of \$800,000 per tribe, \$4,000,000 lifetime max, and 6 cycles of banking available.

The DOJ outlined a process in which, if a beneficiary's funding request exceeded its allocation, the Trustee should request the beneficiary to: (1) submit, within 30 days after the Trustee's notice, a revised funding request (Appendix D-4) setting out what projects it would undertake given the allocated amount; (2) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (3) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Tribe to allow it to add that amount to an allocation in one of the next four funding cycles. The Community could support this process provided banking is available for 6 funding cycles or more, there is a maximum funding cycle amount of \$800,000, and a lifetime maximum amount of \$4,000,000 per tribe.

The Community does not support the proposed alternative to a maximum amount for a funding request in which the Trust Agreement limits the number of times any one beneficiary can submit a funding request in the first five funding cycles. However, the Community does support an option in which the Trust Agreement reduces the number of initial funding cycles to five or fewer. Also, in response to the DOJ's talking point regarding postponement of the application deadline for the second funding cycle until December 1, 2018, the Community recommends a maximum round award of \$1,500,000 per tribe if the later deadline is implemented.

The DOJ also suggested adding language to the Trust Agreement providing that all federally-recognized Tribes that have submitted a certification for beneficiary status form (Appendix D-3) and have been determined a Beneficiary can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the Tribe wants to participate in the funding cycle. The Community does not support this suggestion because the Community believes the added language would create a condition where all tribes apply, regardless of the viability of

their mitigation plans, and significantly dilute the funding available to each tribe. Nor does the Community support the proposed revision to modify deadlines for beneficiary designation (Appendix D-3). Specifically, the Community does not agree that tribes should be allowed to file for beneficiary status after they submit their Appendix D-4.

The DOJ further proposed revising the Trust Agreement to set a minimum “actionable amount,” i.e., an amount that would be necessary to complete an Eligible Mitigation Action. Pursuant to that option, if a Beneficiary receives an allocation under the actionable amount, the Trust Agreement should provide that Beneficiary with two options: (1) opt out and the allocated sum will be added back to the Tribal Allocation Subaccount; or (2) opt to bank the amount of that allocation in the Trust Fund for the benefit of that Beneficiary, allowing it to add that amount to an allocation in a future funding cycle. The Community believes an acceptable approach would be to bank received funds in which, after year 6, the tribe may then propose if it wants to implement or adjust its mitigation strategy based on total funds awarded, or even return the funds at its option.

Finally, the Community recommends a revision permitting a grant of the initially requested amounts, but with no guarantee of future amounts. The tribes that applied for Round 1 funding, and that have yet to receive the amount initially applied for, should be given preference of payment in future rounds of founding, provided these tribes reapply with the same unfunded mitigation strategies. Preference of funding should additionally be provided to tribes located in or adjacent to an Ozone Nonattainment Area. After all the Round 1 tribes receive funding, the original 26 tribes would no longer be eligible to receive funding unless the total amount applied for by the remaining tribes is less than the annual allocated amount. At that point, the original 26 tribes would be eligible up to a maximum of \$4,000,000 lifetime and the original formula would go back into effect.

III. Conclusion

The Community appreciates the steps taken by the Administration and Trustee to address the oversubscribed funding cycles as a result of the current process for distribution of the Trust Fund. The proposed amendments to the Trust Agreement to specify a maximum amount that any one beneficiary can request in a funding cycle and for the duration of the Trust Fund’s cycles, a banking option for the first 6 funding cycles, with the opportunity to implement or adjust mitigation strategies after year 6; revisions to the allocation formula to include an equal division of 10% among the 26 beneficiaries, with the remainder divided based on population and proximity to Ozone Nonattainment Area; and the reduction of the funding cycles to five or fewer will assist in making a more workable distribution of the Trust Fund. Additionally, the Community highly recommends the revision permitting a grant of the initially requested amounts, albeit with no guarantee of future amounts; as well as any criteria for consideration providing a preference for tribes in or adjacent to an Ozone Nonattainment Area.

The Community greatly supports the intent of this proposed amendment. Should you have any questions regarding the Community's comments, please contact our Law Office at 520-562-9779. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'SRL', with a long horizontal flourish extending to the right.

Stephen R. Lewis, Governor
Gila River Indian Community

cc: Robert Stone, Lt. Governor
Linus Everling, General Counsel

From: Lee Brannan <LeeBrannan@lowerbrule.net>
To: OTJ
Sent: 3/28/2018 11:31:33 AM
Subject: Important Notice: Volkswagen Tribal Beneficiary Settlement Update

Good Morning:

Could someone please send me a copy of the letter that was sent to tribal leaders before yesterdays conference call. Chairman Boyd Gourneau did not receive a copy, and we would like to prepare our written responses to the 11 concepts presented. Thank you.

Lee Brannan, General Manager
Lower Brule Sioux Tribe
Cell:605-730-1113

avast! Antivirus: Outbound message clean.

Virus Database (VPS): 180328-2, 03/28/2018
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MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

April 3, 2018

Dear Sir/Madame:

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington D.C. 20530

Email: OTJ@usdoj.gov

The Mille Lacs Band of Ojibwe is a federally recognized Indian Tribe situated in United States Environmental Protection Agency Region 5 and headquartered in Onamia, Minnesota. The Mille Lacs Band is currently in the process of applying as a Beneficiary for the partial settlement made available by the Volkswagen "Clean Diesel" litigation. Although the Mille Lacs Band was not one of the initial 29 Indian Tribes who qualified as Beneficiaries for the first funding cycle, the Mille Lacs Band intends to meet the deadline to become an eligible Beneficiary for the second funding cycle.

Because we see ourselves as potential Beneficiaries, the Mille Lacs Band thanks you for the opportunity to provide written comments in response to your "Second DOJ Letter" dated March 27, 2018. Please find our comments below, ordered in sequence of the talking points set forth in the Second DOJ Letter.

1. Ceiling Set by Funding Request. The Mille Lacs Band believes that each Beneficiary should be subject to a funding ceiling during the first funding cycle. This ceiling should be calculated and adhered to as follows:

- a) Determine the three highest funding requests.
- b) Add together the second- and third-highest funding requests.
- c) Multiply the sum of the second- and third-highest funding requests by 60% (0.6).
The product of this equation represents the ceiling.ⁱ
- d) The highest funding request should not exceed the ceiling. In the event that the highest funding request does exceed the ceiling, the Trustee should require that the Beneficiary submit a revised funding request.

DISTRICT I

43408 Oodena Drive • Onamia, MN 56359
(320) 532-4181 • Fax (320) 532-4209

DISTRICT II

36666 State Highway 65 • McGregor, MN 55760
(218) 768-3311 • Fax (218) 768-3903

DISTRICT IIA

2605 Chiminising Drive • Isle, MN 56342
(320) 676-1102 • Fax (320) 676-3432

DISTRICT III

45749 Grace Lake Road • Sandstone, MN 55072
(320) 384-6240 • Fax (320) 384-6190

URBAN OFFICE

1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

2. Allocation Formula for First Funding Cycle. The Mille Lacs Band believes that 67% of the available funding in the first funding cycle should be divided equally among the 26 Beneficiaries with an approved funding request. This means that only 33% of the available funding should be subject to distribution based on population. If established at these percentages, the Mille Lacs Band believes that this allocation formula should be carried over to future funding cycles. The Mille Lacs Band believes that this is an equitable solution for the Beneficiaries in the first funding cycle.

3. Banking Option. The Mille Lacs Band fully supports the banking option as described in the Second DOJ Letter, but recommends that Beneficiaries be precluded from exercising this option more than three times. In the event that there are six authorized funding cycles, the Mille Lacs Band believes that the banking option should be available to Beneficiaries during the first five funding cycles, not four as set forth in the Second DOJ Letter.

4. Initial Funding Request and Allocated Amount. The Mille Lacs Band agrees with the proposals set forth in the Second DOJ Letter.

5. Maximum Funding Request. The Mille Lacs Band believes that a maximum funding request should be established in accordance with Section 1 of this letter (“Ceiling Set by Funding Request”). The Mille Lacs Band wishes to make clear that, if the maximum funding request for the first funding cycle is established in accordance with Section 1, the Mille Lacs Band would prefer that this maximum funding request calculation be utilized in all subsequent funding cycles.

6. Maximum Number of Funding Requests. The Mille Lacs Band agrees that Beneficiaries should be allowed to submit funding requests in only three of the first five funding cycles.

7. Number of Funding Cycles. The Mille Lacs Band agrees that the number of funding cycles should be reduced to five, but would not support the number of funding cycles being reduced any further. The Mille Lacs Band recommends that, after the first five funding cycles are completed, the Trust should be re-assessed. If it is determined at that time that an additional funding cycle is appropriate, then (and only then) should a sixth funding cycle be authorized.

8. Eligibility for Additional Funding Cycles. The Mille Lacs Band agrees with the process for Beneficiary eligibility set forth in the Second DOJ Letter.

9. Deadline for Second Funding Cycle. The Mille Lacs Band agrees that the application deadline for the second funding cycle should be postponed until December 1, 2018.

10. Allocation Formula for Additional Funding Cycles. As described in Section 2 of this letter (“Allocation Formula for First Funding Cycle”), the Mille Lacs Band believes that all subsequent funding cycles should allocate funds as follows:

- a) Sixty-seven percent (67%) of the funds available for a given funding cycle should be equally divided among all of the eligible Beneficiaries *with approved funding*

requests during that cycle. If a Beneficiary's funding request has exceeded the maximum funding request, the Trustee should require the Beneficiary to submit a revised funding request.

- b) Thirty-three percent (33%) of the funds available for a given funding cycle should be distributed based on population.

11. Minimum Actionable Amount. The Mille Lacs Band recommends a minimum actionable amount of funding requests in an amount \$400,000.00. This number is based on the estimated total cost of purchasing one electric school bus in the amount of \$378,333.00, purchasing one charging station in the amount of \$10,000.00 for the bus, and installing/connecting utility services in the amount of \$11,667.00 to bring the charging station into full operation.

12. Modification of Deadlines for Beneficiary Designation. The Mille Lacs Band agrees with the proposed amendment set forth in the Second DOJ Letter.

Thank you for your consideration of our comments and recommendations. We hope we have assisted the Trustee in determining how best to distribute the Trust funds with the aim of mitigating harmful effects of diesel emissions on both our population and the environment.

Sincerely,



Melanie Benjamin
Chief Executive
Mille Lacs Band of Ojibwe

¹To demonstrate, imagine that the three highest funding requests are as follows: (1) \$250,000, (2) \$220,000, and (3) \$200,000. The Mille Lacs Band formula would yield a funding request ceiling of \$252,000. Calculation: $(\$222,000 + \$200,000) \times 0.6 = \$252,000$. Because the highest funding request (\$250,000) is below the maximum funding request (\$252,000), no further action would be necessary.



Mashantucket Pequot Tribal Nation
Office of the Chief of Staff – Grants Administration
P.O. Box 3060
Mashantucket, CT 06338-3060
Phone: (860) 396-6215
Fax: (860) 396-6283

April 3, 2018

**Mashantucket Pequot Tribal Nation
Mashantucket, Connecticut**

**RE: Response to Request for Comments – Suggestions for Mitigation of an
Oversubscribed Funding Cycle**

Dear Ms. Allery,

Mashantucket Pequot Tribal Nation agrees with the Office of Tribal Justice’s approach to revisit the allocation of funds for the Indian Tribe Trust. At the outset we’d like to note that without knowing the specific numbers – i.e., how much money will be available in each funding cycle, how much money each tribe has requested, and how much money each tribe would be allocated – it is difficult to opine on some of the proposed solutions. However, we appreciate the opportunity to comment on the issues raised during the two discussion sessions. Please do not hesitate to contact me if you have any questions regarding our comments.

Use of Census Data for Allocation

As many tribes expressed during the discussion sessions, census data does not accurately capture our Tribe’s population and the impact of vehicle emissions from activity on our reservation. The census is nearly a decade old, and only includes those who responded to the census questionnaire. Our 2010 census data showed only 299 Tribal Members. However, as we noted in our original application for Trust funds, the Tribe actually has 1,044 members enrolled as of December 2017, more than 250% higher than the 2010 census data indicates.

Nor does the use of census data align with the purpose of the Volkswagen settlement. The EPA brought the underlying action because Volkswagen’s misconduct caused excessive emissions of NOx from its vehicles. Accordingly, the harm Volkswagen caused (and the mitigation required) is not based on how many members a tribe has, but on how many vehicles drive on or around its reservation.

While our Tribe has a relatively small population, our Reservation generates significant traffic due to our business enterprises. Further, reservations closer to urban areas such as ours tend to have less land and lower populations, but higher traffic volume and pollution. Our Tribe and other similarly-situated tribes would have suffered greater impact as a result of Volkswagen’s

misconduct, and thus have a greater need for funds to mitigate such harm, regardless of population.

Using data such as average traffic flow on and around each tribe's reservation, rather than population (or at least, in addition to population), would be a more accurate representation of the harm caused by Volkswagen. This data would also be more recent than the 2010 census, as tribes submit this information annually to the Bureau of Indian Affairs when updating their road inventory under the Tribal Transportation Program. The Department of Transportation also has traffic statistics relevant to traffic volume in the area that could be used to measure impact caused by Volkswagen.

It should be noted that the EPA is capable (or already has) calculated the damage done over the course of period where Volkswagen vehicles were impacted by software tampering and therefore the ability to evaluate the long-term mitigation effects put forth by the States and the Tribes as a result of this Settlement and its purpose. The environmental damage done and the subsequent effectiveness at mitigation of such damage should be the driving basis for projects funded through the settlement. The end result is that once all funding is exhausted that evaluation of NOx reduction data should show that all damage done by Volkswagens involvement in this action has been completely eliminated the environmental emissions impact from that action and at all possible further reduces the NOx emissions to a level that surpasses clean air even prior to Volkswagen's negative footprint.

Conceptual Approaches from March 27 Letter

1: Ceiling Set by Funding Request

Given the Trust appears to already be significantly oversubscribed, a dollar and/or project quantity ceiling(s) would be beneficial. We agree with the concept of a ceiling if it is applied so each project could not exceed a certain dollar amount and/or each tribe could only request funding for a certain quantity of projects. If each individual funding request for all tribes was limited to a certain dollar amount (a ceiling amount to prevent mega projects), it would increase the likelihood smaller tribes would benefit from the Trust. If tribes were limited to a certain number of projects (to prevent requesting funding for every possible project), it would increase the likelihood smaller tribes would benefit from the Trust. These measures would also allow more tribes to benefit from the Trust.

(As noted above, without knowing the specifics on the funds available vs. funds requested, it is hard to opine on these.)

However, we do not agree that the amount each tribe submitted for the first funding cycle should be a ceiling on all future funding requests. Imposing a ceiling based on the initial funding request would unfairly penalize those tribes that made modest requests for the first cycle, thinking they would be able to make additional requests in subsequent cycles.

2: Allocation Formula for First Funding Cycle

We agree with this concept and feel strongly that it should be combined with Concept #10 so that the allocation in all funding cycles provides some funds on an egalitarian basis and some funds based on impact.

It is important to provide some funds each cycle on an egalitarian basis because all tribes and all geographical areas were harmed by Volkswagen. Accordingly, all tribes and their respective geographical areas should receive some share of the funds. Allocating funds in this manner will ensure that over the course of the Trust, each tribe accumulates the funds needed to complete at least some of the mitigation projects necessitated by Volkswagen's conduct.

We also understand the need to allocate some portion of the funds to higher-impact areas to achieve the goals of the settlement. (As noted above, because the purpose of the settlement is to mitigate the harm caused by Volkswagen to the environment, we do not believe census is the proper way to measure impact and the need for funds.)

3: Banking Option

We agree with this concept because it will help tribes accumulate sufficient funds to complete at least some of their desired projects. This assists smaller tribes who potentially could receive a lesser allotment of funds (due to size/population) be able to still save annual funding where they still might be able to conduct an environmental mitigation project. *Additionally, if this were proposed and Tribes were awarded less than the minimum and had to "bank" the funds; how will you verify that 1) that they will apply for future funding years and 2) How will you guaranteed that even after the 5th or 6th annual "banked" funding a Tribe would have enough funds to do a mitigation project?

10: Allocation Formula for Additional Funding Cycles

As noted above, we are strongly supportive of this concept and the 50/50 allocation being used for all funding cycles.

11: Minimum Actionable Amount

We do not support setting a minimum actionable amount. Tribes have a diverse set of needs and capabilities. Any project that would benefit a tribe by reducing NOx emissions should be eligible, with deference to the tribes on how to prioritize projects. A minimum actionable amount would impose an unnecessary restriction on tribes receiving smaller amounts under whatever allocation formula is chosen.* (see #3 above)

12: Modification of Deadlines for Beneficiary Designation

We support this concept.

Other Ideas for Consideration

In addition to the proposals in your March 27 letter, we believe the following would be prudent:

- Require states to allow tribes to apply for funds allocated under the State Trust Agreement.

- Note that we asked our state officials whether the Tribe could apply for such funds, and were told the state might consider our proposal based on certain circumstances. This means the State would only entertain proposals based on their discretion. We feel Tribes should be treated as municipalities for purposes of the State Trust Agreement. This both reflects the nature of air pollution (i.e., it does not stop at the municipal/reservation border) and would provide relief for the oversubscribed Tribal Trust.
- Reduce the 15% administrative cap to a lower number or eliminate it entirely to allow more money to be devoted to the actual mitigation.
- To fulfill the purpose of the settlement of reducing NOx levels, factor into the allocation formula whether tribes are located in non-attainment areas.
- Tribes are already allowed to use mitigation funds as cost match (DERA option 10) towards the Tribal Clean Diesel grant from the EPA (if awarded a grant). Allow only “approved” beneficiaries from Funding Years 1 and 2 – (*i.e., after Year 2 the DOJ/EPA will not consider any future applications from Tribes wanting to apply for beneficiary status under the Trust*) – with the intent that fewer tribes means less competition for funding and increased funding pool would ease the financial burden of cost matching. The intent is that:
 - Use of settlement funds can only be used as matching funds for 1) approved beneficiaries as noted above and 2) approved beneficiaries who are planning to apply for the competitive, discretionary Tribal Clean Diesel grant through the EPA.
 - Or, allow it to be used by eligible, approved beneficiaries (as noted above) to use as matching funds towards any EPA and/or other Federal grant whose purpose and intent is the reduction and mitigation of NOx emissions in the environment.

Again, if you have any questions please don't hesitate to contact me.

Sincerely,



David P. Wagner
Federal Contracts and Grants Administrator

CC:

Jared Baumgart, MPTN Legal Counsel
Charles Ferguson, MPTN Finance Controller
Keith Gove, MPTN Public Works Director

From: Jennifer Reyher <JReyher@mcn-nsn.gov>
To: OTJ
Sent: 4/3/2018 5:59:47 PM
Subject: Muscogee (Creek) Nation Allocation Method Comments

Good Afternoon,

Please see the comments below in regards to the consultation of the method for the allocation of annual funding of the Tribal Allocation Subaccount.

Question 1: Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

Muscogee (Creek) Nation supports the current allocation formula. This allocation was approved by the courts and poses to support activities that will impact the most tribal members. The process of funding projects based on Tribal population will support the purpose of establishing a separate trust from states focusing on Tribal communities.

Question 2: Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

Muscogee (Creek) Nation supports the current state of the agreement by not enacting maximum or minimum amounts for allocations. The current allocation formula ensures that by funding the projects based on population they will have a greater impact on tribal populations.

Question 3: Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

Muscogee (Creek) Nation supports the current state of the agreement by not enacting maximum or minimum amounts for allocations. The current allocation formula ensures that by funding the projects based on population they will have a greater impact on tribal populations.

Question 4: Should the Trust Agreement establish a minimum amount for an allocated share for each Beneficiary? If so, what is an appropriate minimum amount?

No minimum amount should be designated as the needs of Tribal Nations may vary.

We are very concerned that these issues were not addressed before the approval of the Trust Agreement. We like many other Tribal Nations prepared our proposal to the specification of the current approved Trust Agreement and made strategic financial decisions based upon that. The sudden changes will impact our tribal programs and citizens, as well as, our trust in those in charge of this Settlement. We believe this was handled unreasonably with little regard to Tribal Nations and the Court System. We put our trust in Wilmington Trust and the Department of Justice to enact the Trust Agreement that was approved and our incredibly discouraged that will not be the case. We hope that this is settled in a manner that will correct this.

Jennifer Reyher
Environmental Services
Muscogee (Creek) Nation
P.O. Box 580 I Okmulgee, OK 74447
T 918-732-7729
jreyher@mcn-nsn.gov
MuscogeeNation-nsn.gov



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

April 2, 2018

Gina L. Allery, Deputy Director
Office of Tribal Justice
US Department of Justice
950 Pennsylvania Avenue NW, Room 2308
Washington, DC 20530

Subject: Comments on Distribution of the Volkswagen Tribal Allocation Subaccount

The Nez Perce Tribe provides the following comments on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md2672 CRB (JSC) (N.D. Cal.).

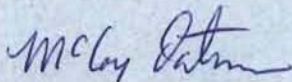
As was indicated in the notice to tribes, the first funding cycle has been oversubscribed by approximately \$25 million dollars. Although it is unknown how much each of the 26 beneficiary tribes that applied requested for projects, it is clear that many, if not all, of the beneficiary tribes will not receive the funding requested. The Nez Perce Tribe is concerned that oversubscriptions will occur in future funding cycles as well. Based on these concerns and a review of the suggested options presented by the Department of Justice on March 27, 2018, the Tribe has several recommendations on how to move forward with the first funding cycle and the remaining funding cycles.

- Maximum funding request - The Trust Agreement should establish a maximum total amount that any one beneficiary tribe can request over the first four funding cycles. For example, if, based on the number of Eligible Beneficiaries in round one, around 200 tribes total were expected to become Eligible Beneficiaries in rounds one through four, the maximum amount could be \$275,000. Or, if around 100 tribes total were expected to become Eligible Beneficiaries in rounds one through four, the maximum amount could be \$550,000.
- The Trust Agreement should provide that 50% of the funding available in a funding cycle should be divided among the eligible beneficiaries tribe applicants based on population, weighted in accordance with the total population (Indian and non-Indian) living within each Indian Tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas) (the "population-based formula").
- The Trust Agreement should provide that the remaining 50% of the funding in a funding cycle should be divided among the eligible beneficiary tribes based on air quality, weighted in accordance with the

extent and magnitude of poor air quality and impacts to human health and the environment based on air quality data, emissions inventories, or non-attainment areas (the "air quality formula").

- Banking option (i.e., accumulation of allocated sums over the first four funding cycles) - The Trust Agreement should allow a beneficiary tribe to bank an allocated amount awarded in a funding cycle under the Trust and add that amount to any allocation awarded in the next funding cycles. This banking option should only apply for the first four funding cycles.
- After the Trustee applies the allocation formula to the first funding cycle, the Trustee should provide notice to all beneficiary tribes of the allocation to each beneficiary tribe applicant. If a beneficiary tribe's funding request exceeded its allocation, the Trustee should: (1) request the beneficiary tribe submit, within 30 days after the Trustee's notice, a revised funding request (Appendix D-4: Beneficiary Eligible Mitigation Action Certification) setting out what projects it would undertake given the allocated amount; (2) allow the beneficiary tribe to opt out and have the allocated sum added back to the Tribal Allocation Subaccount; or (3) allow the beneficiary tribe to opt to bank the amount of that allocation in the Trust Fund for the benefit of that tribe and to allow it to add that amount to an allocation in one of the next four funding cycles.
- Eligibility for additional funding cycles - The Trust Agreement should provide that all federally-recognized tribes that have submitted a certification for beneficiary status form (Appendix D-3 of the Trust Agreement) and have been determined to be a beneficiary tribe can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the beneficiary tribe wants to participate in the funding cycle.
- Deadline for second funding cycle - The Trust Agreement should postpone the application deadline for the second funding cycle until December 1, 2018. Pursuant to the Partial Consent Decree, Volkswagen will have fully funded the Trust Fund by that date, increasing the amount of funds available for the second funding cycle.
- Allocation formula for additional funding cycles - As in the first funding cycle, the Trust Agreement should provide that half of the available funding in each of the second through fourth or fifth funding cycles will be divided among eligible beneficiary tribes based on the population-based formula and the remaining half based on the air quality formula. For the fifth or sixth funding cycles, if the previous cycle had more qualified Eligible Beneficiary projects than funding available, the remaining funding cycles would still be divided among eligible beneficiary tribes based on the population-based formula and the remaining half based on the air quality formula, with the maximum funding request limit still in effect (the maximum total amount that any one beneficiary tribe can request over all funding cycles).

On Behalf of the Nez Perce Tribe,



Mary Jane Miles
Chairman

From: Dawn Jackson <dsjackson@kakefirstnation.org>
Sent: Tuesday, March 27, 2018 10:53 PM
To: OTJ
Subject: RE: DOJ EPA Update: Volkswagen Settlement Formula Discussion

To Whom it May concern,

Are there recorded/transcribed documents that we can review? The times conflicted for OVK to sit in on the call-in's.

Gunalcheesh,

Dawn Khaaxwáan Jackson
Executive Director
Organized Village of Kake
P.O. Box 316
Kake, AK 99830
dsjackson@kakefirstnation.org
(907) 785-6471 ext. 111

Core Purpose: Strengthen Tribal Community and Culture
Core Values: Respect, Collaboration, Endurance, Safety and Security

From: OTJ <OTJ@usdoj.gov>
Sent: Tuesday, March 27, 2018 6:48 AM
To: OTJ <OTJ@usdoj.gov>
Subject: DOJ EPA Update: Volkswagen Settlement Formula Discussion

Dear Tribal Leader:

The Department of Justice and the Environmental Protection Agency hope you will be able to participate in a discussion on the process for distribution of the Volkswagen Settlement-related Tribal Trust Agreement. Discussions this afternoon, March 27, at 4pm Eastern. Please see the attached for updated information in advance of today's discussion.

Thank you.

From: carol <carol.kriebs@sacfoxenviro.org>
To: 'Dara Renee Marks-Marino'; OTJ
CC: 'Ann Marie Chischilly'; 'Andy Bessler'; 'Mehrdad - Khatibi'; 'Lorena Morris-Gonzali'; 'Angela Benedict'; 'Billie Toledo'; 'Brandy Toft'; 'Brian Holter Jr. '; 'Craig Kreman'; 'Jan Paul'; 'Jeremy Fincher'; 'John C. Parada'; 'Joy Wiecks'; 'Kevin Greenleaf'; lweeks@nemont.net; 'Maggie Sanders '; 'Randy'; 'Scott Hansen'; 'sflensburg'; 'Tiffany Janes'; 'Wilfred Nabahe'
Sent: 4/3/2018 3:44:38 PM
Subject: RE: VW Oversubscription Comments from NTAA

That is perfect that covers everything that was talk about on the call.

From: Dara Renee Marks-Marino [mailto:Dara.Marks-Marino@nau.edu]
Sent: Tuesday, April 3, 2018 2:06 PM
To: OTJ@usdoj.gov
Cc: Ann Marie Chischilly <Ann-Marie.Chischilly@nau.edu>; Andy Bessler <Andy.Bessler@nau.edu>; Mehrdad - Khatibi <Mehrdad.Khatibi@nau.edu>; Lorena Morris-Gonzali <Lorena.Morris-Gonzali@nau.edu>; Angela Benedict (angela.benedict@srmt-nsn.gov) <angela.benedict@srmt-nsn.gov>; Billie Toledo <billietoledo@pbpnation.org>; Brandy Toft (air@lldrm.org) <air@lldrm.org>; Brian Holter Jr. <brownfields@klawocktribe.org>; Carol Kriebs <carol.kriebs@sacfoxenviro.org>; Craig Kreman <ckreman@quapawtribe.com>; Jan Paul <Jan.paul@penobscotnation.org>; Jeremy Fincher <Jeremy.Fincher@sacandfoxnation-nsn.gov>; John C. Parada <jparada@augustinetribe.com>; Joy Wiecks <JoyWiecks@FDLREZ.COM>; Kevin Greenleaf (greenleaf@kootenai.org) <greenleaf@kootenai.org>; lweeks@nemont.net; Maggie Sanders <sanders.maggie@nisqually-nsn.gov>; Randy <Randy@cskt.org>; Scott Hansen <scott.hansen@catawbaindian.net>; sflensburg <sflensburg@bbna.com>; Tiffany Janes <tjanes@pci-nsn.gov>; Wilfred Nabahe (wilfred.nabahe@crit-nsn.gov) <wilfred.nabahe@crit-nsn.gov>
Subject: VW Oversubscription Comments from NTAA

Dear Ms. Allery,

Attached please find the letter from the National Tribal Air Association's Executive Committee regarding their recommendations for the oversubscription of funds in the Volkswagen Settlement.

Please let me know if you have any questions.

Sincerely,

Dara Marks Marino: MS, Climate Science and Solutions
Research Specialist: National Tribal Air Association
Institute for Tribal Environmental Professionals
Northern Arizona University
Email: Dara.Marks-Marino@nau.edu
Phone: 928.853.6774



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AIR QUALITY PROGRAM

ENVIRONMENTAL PROGRAMS DIVISION
SOUTHERN UTE INDIAN TRIBE
PO BOX 737, MS 84, IGNACIO, CO 81137
(970) 563 – 4705 · (970) 563 – 0384 FAX

March 30, 2018

Gina L. Allery
Deputy Director
Office of Tribal Justice
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Re: Allocation in an Oversubscribed Funding Cycle

Dear Ms. Allery,

The Southern Ute Indian Tribe ("Tribe") appreciates the opportunity to comment on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries ("Trust Agreement"). The Tribe was deemed a beneficiary to the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries ("Trust") on January 29, 2018. The Tribe did not submit a mitigation plan for the first funding cycle, but is planning on submitting a plan for future funding cycles. The Tribe's Air Quality Program ("AQP") was present for both telephone conferences and provided oral comment during the second telephone conference. The Tribe is submitting the following comments on the process for distribution of the Tribal Allocation Subaccount.

1) The Tribe supports the following options, with modifications, that were presented in the March 27, 2018 letter from the U.S. Department of Justice to tribal leaders:

Option #4: Initial Funding Request and Allocated Amount:

The Tribe supports this option and supports revising the Trust Agreement to apply this process to all funding cycles in the event of oversubscription.

Option #5 Maximum Funding Request:

The Tribe supports this option to the extent that it prevents a small number of tribes from monopolizing a single funding cycle. The Tribe recommends revising the Trust Agreement to set a maximum allocation amount of \$500,000 per eligible mitigation action.

Option #6 Maximum Number of Funding Requests:

The Tribe supports this option as an alternative to Option #5.

Option # 8 Eligibility for Additional Funding Cycles

The Tribe supports this option to the extent it allows tribes that have submitted a Certification for Beneficiary Status (Appendix D-3) and have been designated Beneficiaries to qualify for additional funding cycles. The

Tribe recommends amending the Trust Agreement to make clear that once a tribe has submitted a Certification for Beneficiary Status and is designated a Beneficiary, it can qualify for funding in any funding cycle, provided it submits a notice from its Lead Agency to the Trustee of its intent to participate in that funding cycle by the deadline for that funding cycle.

Option #11: Minimum Actionable Amount

The Tribe supports this option and recommends revising the Trust Agreement to set a minimum actionable amount of \$25,000.

2) For Future Funding Cycles, Approval of a Mitigation Project and Distribution of the Tribal Subaccount Should be Decided Through a Competitive Grant Program.

Currently, allocation of funds from an oversubscribed funding cycle are weighted by total population living within each Indian tribe's tribal area. According to the Trust Agreement, funds from the trust are "to be used for environmental mitigation projects that reduce emissions of nitrogen oxides ("NOx") where the Subject Vehicles were, are, or will be operated."¹ Developing a competitive grant program could ensure mitigation projects that have the greatest impact on reducing NOx emissions and improving air quality are fully funded, therefore, fulfilling the purpose of the Trust. A competitive grant program could be based on a series of factors intended to evaluate the projected impacts of a mitigation project and efficiency of the proposed project. Each factor could be weighted on a scale with mitigation projects scoring the highest having priority in the funding cycle.

One factor that could be considered is whether a Beneficiary's tribal area is close to non-attainment status for ozone or NOx. NOx is a precursor to the formation of ozone and, therefore, a reduction in NOx emissions could reduce the formation of ozone thereby reducing the chance of an attainment area reaching the non-attainment threshold for a National Ambient Air Quality Standard (NAAQS). Another factor that could be considered is proximity of an area or reservation to a Prevention of Significant Deterioration Class I area. Class I areas have special air quality and visibility protection laws designed to preserve air quality and visibility.

3) In the Absence of a Competitive Grant Program, the Allocation Method Should be Revised to Account for the Air Quality in a Beneficiary's Tribal Area.

Revisions to the allocation method for oversubscribed funding cycles should include a mechanism for allocating a greater percentage of funding based on the air quality in a Beneficiary's tribal area. Factors that warrant an additional percentage of funding could be similar to the factors described above.

The Tribe supports revising the allocation method for oversubscribed funding cycles and appreciates the opportunity to provide comments on how that method should be revised. We hope our comments are helpful to you in revising the allocation method.

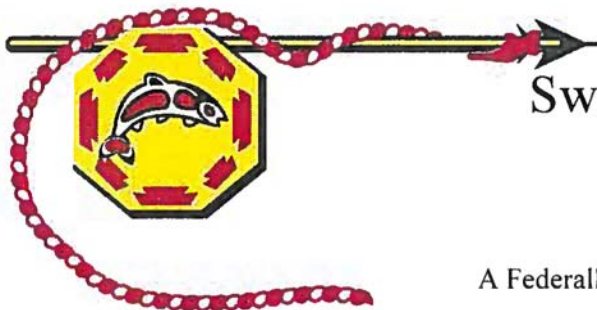
Sincerely,



Christine Sage, Chairman

Southern Ute Indian Tribal Council

¹Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, p.1.



Swinomish Indian Tribal Community

Office of the Tribal Attorney
11404 Moorage Way, La Conner, WA 98257
P: 360.466.1134 F: 360.466.5309

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

April 3, 2018

Gina L. Allery, Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

VIA: email to OTJ@usdoj.gov

RE: Swinomish Indian Tribal Community's Comments on the Process for Distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribal Beneficiaries

Dear Ms. Allery,

The Swinomish Indian Tribal Community (Swinomish) submits these comments in response to the Department of Justice's March 27, 2018 request for comments (March 27 Letter) discussing possible approaches to allocation for an oversubscribed funding cycle of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Trust Agreement) established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

Last week, Swinomish sent you comments that we reiterate and update here to address topics discussed during the two recent consultation calls. The current allocation formula should not be retained because it fails to achieve the express purposes of the Mitigation Trust Agreement: "reduce emissions of nitrogen oxides ('NOx') where the Subject Vehicles were, are or will be operated" and favoring projects that are located in "communities that have historically borne a disproportionate share of the adverse impacts of [NOx] emissions." Large land bases and populations are blunt instruments for measuring concentrations of Subject Vehicles or identifying disproportionately-impacted communities. The data needed to make those measurements and identify those communities are available and should be utilized instead.

On the call last week, many of the commenters raised other issues related to the current formula including the inaccuracy of census data and the existence of highways and refineries that

Ms. Gina L. Allery, Deputy Director

April 3, 2018

Page 2 of 4

generate concentrations of NO_x that are not reflected in residency data. Many tribes, like Swinomish, were intentionally placed on small reservations but have widespread treaty resources off-reservation. Other tribes had their land bases diminished during the termination era but retained off-reservation treaty resources. For tribes with important off-reservation resources, the impacts of NO_x cannot be measured by census data tied to reservation geography. For tribes, like Swinomish, with marine fisheries or tribes that depend on anadromous fish the impacts of NO_x are compounded by the fact that significant amounts of anthropogenic NO_x make their way to coastal waters and are concentrated there acidifying the marine environment. Census data does not measure these impacts and it is a crude substitute for other available information.

There are more Subject Vehicles per-capita in some areas of the United States than there are in others. Census data do not account for that. Also, tribes that rely on resources that are more or less vulnerable to NO_x will be more or less impacted. NO_x hot spots may be due to elevation, weather, shipping traffic, automobile traffic, farming practices, and adjacency to other NO_x-producing anthropomorphic activity. Certain tribes have been more impacted than others due solely to location, regardless of the number of people within the census area.

The most outspoken advocate for retaining the current allocation formula is, understandably, the Cherokee Nation, which has a census population that is an order of magnitude larger than the next largest, more than six times as large, in fact. All of the other beneficiaries' census populations combined do not equal that of the Cherokee Nation. Under the current allocation formula, the majority of funding will go to one tribe regardless of the distribution of Subject Vehicles and NO_x impacts. So, not only does the current allocation formula fail to achieve the express objectives of the Mitigation Trust, it also converges opportunities that were intended for all tribes in one tribe.

For these reasons, Swinomish not only opposes the retention of the current allocation formula, we also oppose any partial retention of that formula. The allocation formula should be tied first to the express purposes of the Mitigation Trust: to "reduce emissions of nitrogen oxides ('NO_x') where the Subject Vehicles were, are or will be operated," favoring projects that are located in "communities that have historically borne a disproportionate share of the adverse impacts of [NO_x] emissions"; and second be tied to the implied purpose of broadly distributing funding opportunities across Indian Country.

For convenience, Swinomish has organized the remainder of its comments according to the twelve questions presented by Justice in the March 27 Letter.

1. Ceiling set by Funding Request

Setting the ceiling for an allocation to a tribe according to the first funding request does not tie the allocation formula back to the express purposes of the Mitigation Trust and only partially addresses the implied purpose of broad distribution. Also, the ceiling is simply set too high for those tribes with large fleets. Due to disparities in the size of fleets most of the beneficiaries—

Ms. Gina L. Allery, Deputy Director
April 3, 2018
Page 3 of 4

potentially all but one—would need to put off their projects until a future cycle, when there may be many more tribes with qualifying projects.

2. 50% divided equally, 50% allocated by population

This proposal is not a solution to the mismatch between the allocation scheme and the purposes of the Mitigation Trust. As explained above, Swinomish opposes the retention in whole or part of the current allocation formula. While this proposal aids in creating a broader distribution across Indian Country, it may still devote half of the available funding to one or two tribes and it is completely divorced from the express purposes of mitigating for the Subject Vehicles and addressing NOx hot spots.

3. Banking

As a standalone option, banking will aid in broadening the distribution of funding a little. But even this anemic benefit will depend on tribal interest remaining constant in future funding cycles, which is difficult to predict. If combined with an allocation formula tied directly to the purposes of the Mitigation Trust, banking may, however, allow for greater flexibility.

4. Prior Notice of Allocation Limits

Swinomish is in favor of providing beneficiaries with notice of their allocation limits, but only so long as the allocation limits are set through a formula that is tied directly to the purposes of the Mitigation Trust.

5. Maximum Request per Cycle

As we expressed in our March 26 letter, Swinomish favors the use of a ceiling per funding cycle—one that will free up funding to mitigate the impacts of Subject Vehicles and NOx hot spots, as well as for a broader distribution of opportunities across Indian Country. For the same reasons, we support the idea of limiting beneficiaries to four funding cycles.

6. Maximum Number of Funding Requests

Swinomish is in favor of this measure if it is adopted in concert with an allocation formula tied directly to the purposes of the Mitigation Trust.

7. Reduce Funding Requests

Swinomish does not oppose this measure if it is adopted in concert with an allocation formula tied directly to the purposes of the Mitigation Trust.

8. Eligibility for Additional Funding Cycles

Ms. Gina L. Allery, Deputy Director
April 3, 2018
Page 4 of 4

Swinomish does not oppose this measure if it is adopted in concert with an allocation formula tied directly to the purposes of the Mitigation Trust.

9. Postpone second funding cycle

Swinomish is not in favor of postponing the second funding cycle because the time taken for the Defendant to fund the account will further delay distribution and may lead to disproportionate increases in demand for second cycle mitigation funding from the hundreds of tribes that have not yet established beneficiary status.

10. 50/50 Split in Subsequent Cycles

This proposal is not a solution to the mismatch between the allocation scheme and the purposes of the Mitigation Trust. It is a baby-splitter. As explained above, Swinomish opposes the retention in whole or part of the current allocation formula. While this proposal aids in creating a broader distribution across Indian Country, it may still devote half of the available funding to one or two tribes and it is completely divorced from the express purposes of mitigating for the Subject Vehicles and addressing NOx hot spots.

11. Minimum Actionable Amount

Swinomish does not oppose this measure if it is adopted in concert with an allocation formula tied directly to the purposes of the Mitigation Trust.

12. Deadline for Beneficiary-Status

Swinomish supports this measure due to the scarcity of funding and the inability to estimate the demands for funding in future cycles. But it should be adopted in concert with an allocation formula tied directly to the purposes of the Mitigation Trust.

If you have any questions about our comments, please call me at (360) 707-8689 or email at dwatts@swinomish.nsn.us.

Sincerely,



Daniel Watts
Staff Attorney



CHEROKEE NATION
OFFICE OF THE SECRETARY OF
NATURAL RESOURCES

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

Sara Hill
Secretary of
Natural Resources

April 3, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: Comments Regarding Potential Changes to the Indian Tribe Trust Regarding
Oversubscription Allocation

Dear Sir or Madam:

This letter concerns potential amendments to the oversubscription allocation method in the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Indian Trust Agreement”). Reference is made to the March 5, 2018 order issued by the United States District Court for the Northern District of California (“March 5 Order”); the notice issued by the Trustee Wilmington Trust, N.A. (“Trustee”) on that same day; the March 16, 2018 letter issued by the Office of Tribal Justice (“March 16 Letter”); the call held on March 21, 2018 regarding these issues (“March 21 Call”); the March 27, 2018 letter issued by the Office of Tribal Justice (“March 27 Letter”); the call held on March 27, 2018 regarding these issues (“March 27 Call”); the Cherokee Nation’s letter to the Trustee, U.S. Department of Justice (“DOJ”), and U.S. Environmental Protection Agency (“EPA”) dated March 16, 2018; and the Cherokee Nation’s letter to the Office of Tribal Justice dated March 26, 2018. For reasons set forth in the Cherokee Nation’s previous letters and in these comments, the Cherokee Nation believes that the Trustee should allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement. Changes could be made in subsequent funding cycles after further consultation with Indian tribes.

Initially, many of the suggestions made during the March 27 Call seem to only take into account the roughly two dozen tribes that applied during the first funding cycle, without taking into account what future funding cycles may look like. This bias towards the first funding cycle would not result in a fair approach for all of the funding cycles. For example, one minimum that was suggested was \$200,000. Using that amount would not even allow every tribe to receive

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funds, since there is at most \$96,028.08 available per tribe. A \$200,000.00 minimum would prevent all tribes from being able to receive an award, would result in an inequitable distribution in the first year, would be unfair to tribes that did not apply in the first year in reliance on the allocation method that existed at the time their decision to apply was made,¹ and would in all likelihood need to be changed next year upon the resulting increase in tribes applying for funds during the next cycle.

Another approach with an unfair bias would be to equally divide funds by tribe. To be clear, the Cherokee Nation does not support any approach that would equally divide funds amongst the eligible beneficiary tribes. The March 27 Letter mentions such an approach at least twice, with a method that would split half the funds equally and half the funds by population. As detailed in the Cherokee Nation's prior letter, dividing funds equally by tribe bears no nexus to the illegal VWs. Nor would it be fair to larger tribes, for the obvious reason that treating a tribe of 20 the same as a tribe of more than half a million will not result in an equitable distribution. This remains true even if only half the funds are divided equally by tribe. Moreover, dividing funds equally also harms tribes that did not apply in year one in reliance on the Trustee distributing funds as set forth in the Indian Trust Agreement. Any approach should not be based solely on the tribes that applied this year, and must take into account the 500-plus other tribes that can apply in future funding cycles as well.

The Cherokee Nation believes the most appropriate basis for allocating funds under the Indian Trust Agreement remains a per capita method. There are some modifications that the Cherokee Nation would support, including a one-time minimum award of \$10,000.00 with the remainder distributed by population, reduced number of funding cycles, and clarification on allowing accumulation/banking of awards. However, the Nation is concerned with some of the minimums that were suggested during the March 27 Call. For example, if the minimum were increased to \$25,000.00, a tribe of 20 would then receive \$1,250.00 per person, which is 111 times as much as they would have received under a per capita method ($\$1,250.00/\11.30). As the Cherokee Nation stated in its prior letter, the largest variance from a per capita distribution for the states was a factor of 1.57. Allowing a factor of 111 under the Indian Trust Agreement neither meets the goals of mitigating the harm caused by the illegal VWs where they were, are, or will be located, nor is it fair to larger tribes. Any modifications that are made to increase the per capita share of smaller tribes come at the expense of the per capita share of larger tribes. While the Cherokee Nation would support some such modifications despite their negative impacts, increasing the minimum to \$25,000.00 could decrease the Cherokee Nation's share of funds by over a million dollars. That drastic of a reduction was not what the Cherokee Nation relied on at the time it made its decision to waive certain rights and become a beneficiary.

Moreover, only the smallest of tribes would receive \$10,000.00, since tribes would be able to receive a larger award by accumulating/banking their per capita award amounts over multiple funding cycles. For example, a tribe of 1,000 would expect to receive a total award of about \$21,300.00, consisting of the \$10,000.00 minimum plus a per capita award of \$11,300.00 ($1,000 * \11.30). This is a per capita award of \$21.30, or a factor of 1.88 times higher than a

¹ Clearly, tribes that did not apply believing they would have received only a few hundred dollars would have made a different choice had they known the rules would be changed so that they could receive a few hundred thousand dollars.

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straight per capita approach. A tribe of 2,000 would expect to receive about \$32,600.00 (\$10,000.00 + 2,000*\$11.30). This is a per capita award of \$16.30, or a factor of 1.44 times higher than a straight per capita approach.

Finally, the Cherokee Nation does not believe the maximums or limitations suggested are appropriate. The Cherokee Nation and the other larger tribes are already being asked to give up a portion of their share by allowing for a minimum award; they should not then also give up even more by being the only tribes subjected to a maximum. Moreover, limiting the number of cycles a tribe can apply is the antithesis of the accumulation/banking approach the Cherokee Nation supports.

Thank you for your consideration of the Cherokee Nation's comments. Please do not hesitate to contact me with any questions.

Sincerely,

Sara Hill

Sara Hill
Secretary of Natural Resources
Cherokee Nation

cc: Volkswagen Diesel Emissions
Environmental Mitigation Trust for Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Email: RCrane@wilmingtontrust.com

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

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April 3, 2018

Via Electronic Mail

Gina L. Allery
Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: Written Comments of Cheyenne River Sioux Tribe Regarding Volkswagen Indian Tribe Trust Allocation

Dear Deputy Director Allery:

The Cheyenne River Sioux Tribe submits these written comments regarding the distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Tribal Trust Agreement) that was established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). The Tribal Trust Agreement, approved by the court on September 19, 2017, established the Indian Tribe Trust (Tribal Trust).

These comments generally mirror those provided by the Cheyenne River Sioux Tribe in the discussion sessions on March 21, 2018, and March 27, 2018, with certain important changes. The Cheyenne River Sioux Tribe submits that, in all oversubscribed funding cycles, beginning with

the first funding cycle, a population-based allocation formula should be used that allocates a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010 Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, provided that the ceiling for an allocation in a single funding cycle should be set at the amount in the Indian Tribe Beneficiary's funding request submitted to the Trustee or \$1,200,000, whichever is less.

Background

The Cheyenne River Sioux Tribe is one of twenty-nine federally recognized Indian Tribes that qualified as beneficiaries under the Tribal Trust (Indian Tribe Beneficiaries). In addition, the Tribe was one of twenty-six Indian Tribe Beneficiaries that submitted a timely request to receive funding for an Eligible Mitigation Action project in the first funding cycle under the Tribal Trust.

The Cheyenne River Sioux Tribe has been informed that the first funding cycle is “oversubscribed,” in that total amount of approvable funding requests received by the Trustee, Wilmington Trust, N.A., exceeded the amount of funds available for the cycle. *See* Tribal Trust Agreement § 5.0.5.2.3. When a funding cycle is oversubscribed, the Tribal Trust Agreement sets out a formula to allocate a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within each Indian Tribe's tribal area according to the 2010 Census, including reservations, off-reservation trust lands, and statistical areas. *Id.* This allocation formula was approved by the Court.

On March 2, 2018, the United States informed the Court if funds are distributed for the first funding cycle in accordance with the allocation formula in the Tribal Trust Agreement, “the result would be inconsistent with the purpose of the Trust.” *See* Letter to Tribal Leaders 1 (Mar. 16, 2018). During the discussion sessions on March 21, 2018, the United States informed participants that if the current allocation formula were applied to the first funding cycle, 25 of 26 tribes would receive less than the total amount they requested and some tribes would receive less than \$200.

On March 2, 2018, the court issued an order directing the United States and interested Indian Tribe Beneficiaries to meet and confer, in consultation with the Trustee, to discuss whether any adjustment should be made to the allocation formula applicable to oversubscribed funding cycles. The Department of Justice and the Environmental Protection Agency have invited comments from Indian Tribe Beneficiaries.

The Current Population-Based Approach Should Be Retained with Adjustments

The Cheyenne River Sioux Tribe submits that the population-based allocation formula should be retained, provided that the formula should be adjusted to allocate a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010 Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, and provided further that the ceiling for an allocation for an Indian Tribe Beneficiary for a single funding should be set at the amount in the Indian Tribe Beneficiary's funding request submitted to the Trustee or

\$1,200,000, whichever is less. These adjustments should be made for the first funding cycles and all future funding cycles.

The Cheyenne River Sioux Tribe submits that the population-based approach outlined in this letter is fair and equitable. Weighting the shares of Indian Tribe Beneficiaries in accordance with the total population living within the Indian country of each Indian Tribe insures that the Indian country residents of Indian Tribe Beneficiaries will receive an equal per capita share of the Tribal settlement funds. Further, Tribes with larger populations generally have greater transportation needs and greater transportation impacts (more tribally-owned vehicles, more miles driven, more NOx emissions, etc.) than Tribes with smaller populations.

Suggestions for Further Adjustments

If the United States decides to consider other changes the allocation formula, the Cheyenne River Sioux Tribe would submit that:

1. The modified formula should provide that, in each funding cycle after the first, a small portion of the Eligible Mitigation Action funds (for example, 10%) could be divided equally among all Indian Tribe Beneficiaries that submit Eligible Mitigation Action proposals and the remainder (90%) could be divided using the weighted population-based formula outlined in this letter. A cap of \$1,200,000 could be placed on the amount of funds a single Tribe could receive in a single funding cycle.

Using this approach, if the total amount of Eligible Mitigation Action funds in a funding cycle were \$9,000,000, and if 29 Indian Tribe Beneficiaries submitted Eligible Mitigation Action projects, ten percent (\$900,000) would be divided equally among all Tribes, such that each would receive approximately \$31,000, and the remaining 90% (\$8,100,000) would be divided using the weighted population-based formula outlined in this letter.

This approach would guarantee a minimum amount of funding to small-population Tribes and allows large-population Tribes to receive more funding. This approach would represent a compromise between small and large Indian country population Tribes.

2. If additional factors are considered, in addition to population, they should be limited to land base (including Reservation lands and off-reservation trust lands) and financial need (measured by per capita income, poverty rate, or other similar factors).

Tribes with larger land bases should also receive more funding than Tribes with smaller land bases because they have greater transportation needs and impacts (more miles of roads, more privately-owned vehicles, more government-owned vehicles, more miles driven, more NOx emissions, etc.). For example, the Cheyenne River Indian Reservation encompasses 2.8 million acres of land in north-central South Dakota and is approximately the same size as the State of Connecticut. The Reservation includes 832 miles of County roads, 307 miles of Bureau of Indian Affairs roads, 232 miles of State highways, and 52 miles of Tribal roads. High-NOx-emission school buses and tractor trailers drive hundreds,

if not thousands, of miles per day on the Reservation, transporting students and hauling equipment, building materials, fuel, and other goods.

Tribes with greater financial need should receive more funding than those with less financial need. Without Volkswagen settlement funds, poorer Tribes are less able than richer Tribes to independently fund programs to reduce NOx emissions on their Reservations.

The Cheyenne River Indian Reservation is home to two of the poorest counties in the United States. The 2010 Census reported that Ziebach County was the poorest county in the United States and Dewey County was the seventy-eighth (78th) poorest county in the United States. Economic conditions have not improved substantially since 2010. According to the most recent data available from the U.S. Census Bureau, Dewey County had a poverty rate of 27.5% in 2016 and Ziebach County had a poverty rate of 43.7% in 2016. These factors should be taken into consideration.

3. There should not be a limit on the number of funding requests an Indian Tribe Beneficiary may submit.
4. The Cheyenne River Sioux Tribe is not opposed to a banking option or a reduction in the total number of funding cycles, provided the total amount of funding in the Tribal Allocation Subaccount remains the same.

The Cheyenne River Sioux Tribe is opposed to any modification of the deadlines in the Indian Trust Agreement for Indian Tribes to file Certifications of Beneficiary Status. Twenty-nine (29) Indian Tribes, including the Cheyenne River Sioux Tribe, met the deadlines established in the Indian Trust Agreement and were designated as Indian Tribe Beneficiaries by the Trustee. Nothing in the Indian Trust Agreement permits other Indian Tribes to file Certifications for Beneficiary Status past the deadlines. The deadlines should not be modified or amended.

The Cheyenne River Sioux Tribe thanks you for your consideration of these comments.

Sincerely,



David D. Nelson, Director
Department of Environment and Natural Resources



Steven J. Gunn
Special Counsel to the Cheyenne River Sioux Tribe



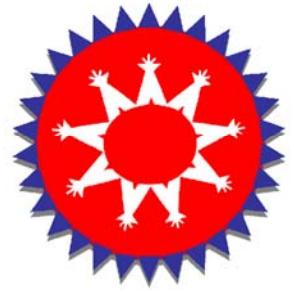
Oglala Sioux Tribe

PINE RIDGE INDIAN RESERVATION

P.O. Box #2070

Pine Ridge, South Dakota 57770

1(605) 867-5821 Ext. 8420 (O) / 1(605) 867-6076 (F)



President Troy "Scott" Weston

April 3, 2018

Via Electronic Mail

Gina L. Allery
Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: Written Comments of Oglala Sioux Tribe Regarding Volkswagen Indian Tribe Trust Allocation

Dear Deputy Director Allery:

The Oglala Sioux Tribe submits these written comments regarding the distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Tribal Trust Agreement) that was established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). The Tribal Trust Agreement, approved by the court on September 19, 2017, established the Indian Tribe Trust (Tribal Trust).

These comments generally mirror those provided by the Oglala Sioux Tribe in the discussion sessions on March 21, 2018, and March 27, 2018, with certain important changes. The Oglala Sioux Tribe submits that, in all oversubscribed funding cycles, beginning with the first funding cycle, a population-based allocation formula should be used that allocates a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010 Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, provided that the ceiling for an allocation in a single funding cycle should be set at the amount in the Indian Tribe Beneficiary's funding request submitted to the Trustee or \$1,200,000, whichever is less.

Background

The Oglala Sioux Tribe is one of twenty-nine federally recognized Indian Tribes that qualified as beneficiaries under the Tribal Trust (Indian Tribe Beneficiaries). In addition, the Tribe was one of twenty-six Indian Tribe Beneficiaries that submitted a timely request to receive funding for an Eligible Mitigation Action project in the first funding cycle under the Tribal Trust.

The Oglala Sioux Tribe has been informed that the first funding cycle is “oversubscribed,” in that total amount of approvable funding requests received by the Trustee, Wilmington Trust, N.A., exceeded the amount of funds available for the cycle. *See* Tribal Trust Agreement § 5.0.5.2.3. When a funding cycle is oversubscribed, the Tribal Trust Agreement sets out a formula to allocate a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within each Indian Tribe’s tribal area according to the 2010 Census, including reservations, off-reservation trust lands, and statistical areas. *Id.* This allocation formula was approved by the Court.

On March 2, 2018, the United States informed the Court if funds are distributed for the first funding cycle in accordance with the allocation formula in the Tribal Trust Agreement, “the result would be inconsistent with the purpose of the Trust.” *See* Letter to Tribal Leaders 1 (Mar. 16, 2018). During the discussion sessions on March 21, 2018, the United States informed participants that if the current allocation formula were applied to the first funding cycle, 25 of 26 tribes would receive less than the total amount they requested and some tribes would receive less than \$200.

On March 2, 2018, the court issued an order directing the United States and interested Indian Tribe Beneficiaries to meet and confer, in consultation with the Trustee, to discuss whether any adjustment should be made to the allocation formula applicable to oversubscribed funding cycles. The Department of Justice and the Environmental Protection Agency have invited comments from Indian Tribe Beneficiaries.

The Current Population-Based Approach Should Be Retained with Adjustments

The Oglala Sioux Tribe submits that the population-based allocation formula should be retained, provided that the formula should be adjusted to allocate a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010 Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, and provided further that the ceiling for an allocation for an Indian Tribe Beneficiary for a single funding should be set at the amount in the Indian Tribe Beneficiary’s funding request submitted to the Trustee or \$1,200,000, whichever is less. These adjustments should be made for the first funding cycles and all future funding cycles.

The Oglala Sioux Tribe submits that the population-based approach outlined in this letter is fair and equitable. Weighting the shares of Indian Tribe Beneficiaries in accordance with the total population living within the Indian country of each Indian Tribe insures that the Indian country residents of Indian Tribe Beneficiaries will receive an equal per capita share of the Tribal settlement funds. Further, Tribes with larger populations generally have greater transportation needs and greater transportation impacts (more tribally-owned vehicles, more miles driven, more NOx emissions, etc.) than Tribes with smaller populations.

Suggestions for Further Adjustments

If the United States decides to consider other changes the allocation formula, the Oglala Sioux Tribe would submit that:

1. The modified formula should provide that, in each funding cycle after the first, a small portion of the Eligible Mitigation Action funds (for example, 10%) could be divided equally among all Indian Tribe Beneficiaries that submit Eligible Mitigation Action proposals and the remainder (90%) could be divided using the weighted population-based formula outlined in this letter. A cap of \$1,200,000 could be placed on the amount of funds a single Tribe could receive in a single funding cycle.

Using this approach, if the total amount of Eligible Mitigation Action funds in a funding cycle were \$9,000,000, and if 29 Indian Tribe Beneficiaries submitted Eligible Mitigation Action projects, ten percent (\$900,000) would be divided equally among all Tribes, such that each would receive approximately \$31,000, and the remaining 90% (\$8,100,000) would be divided using the weighted population-based formula outlined in this letter.

This approach would guarantee a minimum amount of funding to small-population Tribes and allows large-population Tribes to receive more funding. This approach would represent a compromise between small and large Indian country population Tribes.

2. If additional factors are considered, in addition to population, they should be limited to land base (including Reservation lands and off-reservation trust lands) and financial need (measured by per capita income, poverty rate, or other similar factors).

Tribes with larger land bases should also receive more funding than Tribes with smaller land bases because they have greater transportation needs and impacts (more miles of roads, more privately-owned vehicles, more government-owned vehicles, more miles driven, more NOx emissions, etc.). For example, the Pine Ridge Indian Reservation encompasses nearly three million acres of land and is the eighth largest Indian reservation in the United States. It is larger than the states of Delaware and Rhode Island combined. The Reservation encompasses all of Oglala Lakota County, a portion of Bennett County, and half of Jackson County. The Reservation includes hundreds, if not thousands, of miles of Federal, State, County, and Tribal Roads. High-NOx-emission school buses and tractor trailers drive hundreds, if not thousands, of miles per day on the Reservation, transporting students and hauling equipment, building materials, fuel, and other goods.

Tribes with greater financial need should receive more funding than those with less financial need. Without Volkswagen settlement funds, poorer Tribes are less able than richer Tribes to independently fund programs to reduce NOx emissions on their Reservations.

The three counties included in the Pine Ridge Indian Reservation -- Oglala Lakota County, Bennett County, and Jackson County -- are three of the poorest counties in the United States, with poverty rates of 47.3%, 34.2%, and 32.9%, respectively, according to data from the 2010 Census. These factors should be taken into consideration.

April 3, 2017

Page 4

3. There should not be a limit on the number of funding requests an Indian Tribe Beneficiary may submit.
4. The Oglala Sioux Tribe is not opposed to a banking option or a reduction in the total number of funding cycles, provided the total amount of funding in the Tribal Allocation Subaccount remains the same.

The Oglala Sioux Tribe is opposed to any modification of the deadlines in the Indian Trust Agreement for Indian Tribes to file Certifications of Beneficiary Status. Twenty-nine (29) Indian Tribes, including the Oglala Sioux Tribe, met the deadlines established in the Indian Trust Agreement and were designated as Indian Tribe Beneficiaries by the Trustee. Nothing in the Indian Trust Agreement permits other Indian Tribes to file Certifications for Beneficiary Status past the deadlines. The deadlines should not be modified or amended.

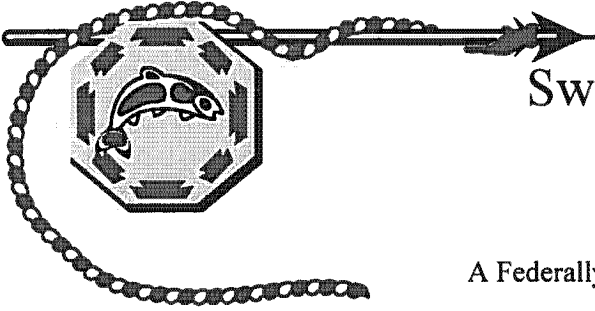
The Oglala Sioux Tribe thanks you for your consideration of these comments.

Sincerely,


Mason Big Crow
Tribal Treasurer



Steven J. Gunn
Special Counsel to the Oglala Sioux Tribe



Swinomish Indian Tribal Community

Office of the Tribal Attorney
11404 Moorage Way, La Conner, WA 98257
P: 360.466.1134 F: 360.466.5309

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 5123

July 2, 2018

Gina L. Allery, Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Ave NW, Room 2318
Washington, D.C. 20530

VIA: email to OTJ@usdoj.gov

RE: Swinomish Indian Tribal Community's Comments on Proposed Approach to Distribution of Tribal Allocation Subaccount of the Volkswagen Environmental Mitigation Trust Agreement

Dear Ms. Allery,

The Swinomish Indian Tribal Community ("Swinomish") submits these comments in response to the invitation of the Department of Justice (DOJ) and Environmental Protection Agency (EPA) to Indian Tribe Beneficiaries to the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement ("Trust Agreement") established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales, Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). Specifically, DOJ's May 10, 2018 letter articulated a proposed formula for allocating Trust funds to Tribal Beneficiaries. That letter requested written comments from the Tribes by July 2, 2018.

However, DOJ filed a "Notice of Proposed Material Modifications to the Indian Tribe Trust Agreement" (Notice) with the Court on June 21, 2018, and attached the proposed modifications. Among other changes to the Trust Agreement, the June 21 Notice asks the Court to adopt a new version of the allocation formula. The allocation formula proposed in the Notice contains substantive changes compared to the formula in DOJ's May 10 letter.

Swinomish is troubled that the June 21 Notice was filed nearly two weeks before completion of the July 2 comment period that was established in DOJ's May 10 letter. As a result, it appears that not all of the input from tribes such as Swinomish, which intended to submit comments by the July 2 deadline, could be received and considered by DOJ before its preparation and filing of the proposed modifications. Swinomish hopes that there has either been a misunderstanding or inadvertent sequencing misstep, and that in the future DOJ will defer any decision or action that is subject to tribal comment until after the completion of the comment period.

Among other things, Swinomish intended to point out in its July 2 comment that it appears that the May 10 proposal fails to address previous feedback from Tribal Beneficiaries that population-based allocation is inconsistent with the Trust purpose. The proposal also does not provide for banking, a simple, pragmatic and administratively feasible approach to mitigate oversubscribed funding cycles.

DOJ's most recent letter, dated June 25, 2018, asks Tribal Beneficiaries to submit written comments on the Notice by July 23, 2018. It does not address the July 2 deadline. Given the series of events outlined above, Swinomish will include comments that would otherwise have been submitted by July 2 in its comments on the Notice and allocation formula to be submitted by July 23.

If you any questions about our comments, please do not hesitate to contact me by phone at 360-466-5524 or by email at wlemay@swinomish.nsn.us.

Sincerely,

A handwritten signature in blue ink, reading "Weston LeMay". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Weston LeMay
Staff Attorney,
Office of Tribal Attorney

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Putting Our People First”

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

June 29, 2018

United States Department of Justice
Office of Tribal Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, D.C. 20530
OTJ@usdoj.gov

Re: Written comments prepared by the Gila River Indian Community regarding the Volkswagen Settlement discussion sessions.

Dear Ms. Deputy Director Allery,

The Gila River Indian Community (the “Community”) hereby respectfully submits the following comments regarding the Volkswagen Settlement discussion sessions.

I. Gila River Indian Community

The Community is a federally recognized Indian tribe composed of the Akimel O’Otham (Pima) and Pee-Posh (Maricopa) tribes. The total enrollment of the Community is approximately 20,000 members. The Gila River Indian Reservation (the “Reservation”) is located in southern Arizona and encompasses nearly 600 square miles in Pinal and Maricopa counties. The Community is both an urban and rural Community and shares a border with the cities of Phoenix, Chandler, Coolidge, Casa Grande, Gilbert, Maricopa, and Queen Creek.

II. Comments on the Volkswagen Settlement Discussion Sessions

On May 10, 2018, the Department of Justice (“DOJ”) issued a letter for the third phone discussion on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”) established pursuant to a partial settlement of *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). The Community recognizes the purpose of the settlement to fund specific actions to reduce the sources of nitrogen

oxides emissions. In consideration of the need to develop methodologies that maximize emissions reduction, the Community strongly advocates for an allocation formula that grants additional funds for those tribes that are located in or adjacent to Ozone or PM2.5 nonattainment areas. It is evident that reducing emissions from diesel vehicles will have the most impact for tribes in or adjacent to these nonattainment areas, thereby fulfilling the explicitly stated purpose of the settlement.

As such, the Community proposes an alternate initial step for establishing the allocation formula, as follows:

Step 1: Statement of Proximity. Tribes may supply an addendum with a statement of proximity to a nonattainment area. Ten percent of the cycle total shall be reserved for distribution to tribes located on or adjacent to a nonattainment area. The amount of these funds shall be distributed to qualifying tribes based on a pro rata population-based distribution using the original formula (as further described at Step 2).

Regarding separate deadlines for Designated Beneficiary's Participation Notice and funding request, the Community believes that this method may have the effect of diluting the pool of funding available to tribes with ready projects. The Community seeks clarification on the mechanism for notifying tribes that plan to participate if extra money remains available in a funding cycle. It is anticipated that extra funds will result where one or more tribes withdraw from a funding cycle after receiving their funding award because the funds are insufficient to satisfy their planned projects.

In anticipation of extra funds, the Community opines that a mitigation plan be included along with the Designated Beneficiary's Participation Notice for each cycle. Instead of rolling extra funds into subsequent cycles, the remaining funds should again be divided according to the original formula. Tribes may then accept for use or banking or choose to deny the extra funds, which will then be distributed to the proximate cycle. This allocation method will ensure that tribes get as much funding as can be used in each cycle.

Although the proposal for banking funds was seemingly disregarded at the third discussion session, the Community remains in support of the option for tribes to bank funds. Even though there may be enough funding to complete a project, it may be the case that there is not enough funding to support administrative staff to assist with the implementation of that project. Banking funding will provide support for these additional and unanticipated project costs, especially for larger projects where this issue will likely pose the greatest challenge to implementation.

In response to the discussion regarding group division based on population, the Community believes use of the 2010 U.S. Census to quantify population ranges should be replaced by tribal census data for on-reservation tribal members, and only respecting the specific tribe or band. However, the Community is in agreement with the Proposed Material Modifications to Indian Tribe Trust Agreement ("Modifications"), filed on June 21, 2018, providing for the creation of three population groups, instead of the two population groups proposed in the May 10th letter.

The Community is also in agreement with the proposed standardized Designated Beneficiary's Participation Notice as a prerequisite to qualify for consideration for funding beginning in the second funding cycle. The Community is further in agreement with the reduction of funding cycles from five to four, with a fifth funding cycle to exhaust trust funds. Finally, the Community is in agreement with changing the deadline for participation in the second funding cycle from September 1, 2018 until December 1, 2018.

III. Conclusion

The Community appreciates the steps taken by the Administration and Trustee to address the oversubscribed funding cycles as a result of the current process for distribution of the Trust Fund. However, the Community highly recommends adopting revisions in which the formula allocates ten percent of the cycle total funding to tribes that are located in or adjacent to nonattainment areas, including a requirement for tribes to submit a statement of proximity; calculation of the population ranges for the allocation formula using tribal census data for on-reservation tribal members that is specific to that tribe or band; extra funds in a given cycle reallocated according to the original formula to tribes with an appropriate mitigation plan, as well as a process for notification of extra funds; and a process for banking for additional and unanticipated project costs. Furthermore, the proposed amendments to the Trust Agreement, as presented for and at the third phone discussion, to create a standardized notice for qualification, a reduction in funding cycles, and for postponement of the second funding cycle deadline, as well as the Modifications proposal to create three population groups, will assist in making a more workable distribution of the Trust Fund.

The Community greatly supports the intent of this proposed amendment. Should you have any questions regarding the Community's comments, please contact our Law Office at 520-562-9779. Thank you for your time and consideration.

Sincerely,



for Stephen R. Lewis, Governor
Gila River Indian Community

cc: Robert Stone, Lt. Governor
Linus Everling, General Counsel
Gila River Community Council Members (16)

From: Horan, Christopher <Christopher.Horan@SRPMIC-nsn.gov>
To: OTJ
CC: Hibbard, Carol; King, Niccole
Sent: 6/29/2018 4:14:33 PM
Subject: VW Settlement Comments
Attachments: Census Table CPH-T-6.pdf; Census Table DP-1.pdf; Dkt 4701 Notice of Beneficiary Designation (Indian Tribe Trust)_0.pdf

Hello,
Below is the Salt River Pima Maricopa Indian Community Comments for the questions put forth regarding current letter dated 5/10/18.

1. 2010 US Census Table DP-1 (referenced as the population source in the May 10, 2018 and attached) is a demographic table. Census Table CPH-T-6 (attached) provides populations by tribe. In compiling the numbers in Census Table CPH-T-6 for the 29 tribes who originally received beneficiary status (as detailed in Notice of Beneficiary Designation, Document 4701, attached), only two (2) of the 29 tribes meet the Group 2 population of 65,678. If this is the case, the dollar figure being allocated to the two Group 2 tribes is disproportionately high in comparison to the amounts allocated to the Group 1 tribes. The algorithm should be reapplied to account for only two (2) Group 2 tribes.
2. Why was proximity to NOx or PM nonattainment areas not considered when the purpose of the settlement was to reduce NOx in areas affected by VW's noncompliance? The two Group 2 tribes are not in NOx or PM nonattainment areas.

While the argument may be made that nonattainment status was considered with the states for their settlements, the states are not sharing their settlements with tribes and there are Group 1 tribes in nonattainment areas.

3. Are the June 21, 2018 material modifications to the Indian Tribe Trust Agreement based upon comments from the May 21, 2018, discussion session with Tribes and OTJ? If yes, will comments regarding the discussion received after June 21 but no later than the July 2, 2018 deadline for written comments be considered and implemented? If the material modifications are not based on the June 21 discussion, please clarify their origin.

SRPMIC may submit additional recommendations for any further discussions on current and future allocations.

If there are questions please feel free to contact me!

Sincerely,

Christopher "Chris" Horan
CDD-EPNR Division Manager
Community Development Department (CDD)
Environmental Protection & Natural Resources (EPNR)
Salt River Pima Maricopa Indian Community
Off: Two Waters, Bldg. B, 3rd fl., 10079 E. Osborn Rd., Scottsdale, AZ 85256
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2010 Census CPH-T-6. American Indian and Alaska Native Tribes in the United States and Puerto Rico: 2010

Description of Table 1.

This table shows data for American Indian and Alaska Native tribes alone and alone or in combination for the United States. Those respondents who reported as American Indian or Alaska Native only and one tribe are shown in Column 1. Respondents who reported two or more American Indian or Alaska Native tribes, but no other race, are shown in Column 2. Those respondents who reported as American Indian or Alaska Native and at least one other race and one tribe are shown in Column 3. Respondents who reported as American Indian or Alaska Native and at least one other race and two or more tribes are shown in Column 4. Those respondents who reported as American Indian or Alaska Native in any combination of race(s) or tribe(s) are shown in Column 5, and is the sum of the numbers in Columns 1 through 4. For a detailed explanation of the alone and alone or in combination concepts used in this table, see the 2010 Census Brief, "The American Indian and Alaska Native Population: 2010" at <www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.

Table 1. American Indian and Alaska Native Population by Tribe¹ for the United States: 2010

Source: U.S. Census Bureau, 2010 Census, special tabulation.

Internet release date: December 2013

Note: Respondents who identified themselves as American Indian or Alaska Native were asked to report their enrolled or principal tribe. Therefore, tribal data in this data product reflect the written tribal entries reported on the questionnaire. Some of the entries (for example, Iroquois, Sioux, Colorado River, and Flathead) represent nations or reservations. The information on tribe is based on self-identification and includes federally- or state-recognized tribes, as well as bands and clans.

(For information on confidentiality protection, nonsampling error, and definitions, see www.census.gov/prod/cen2010/doc/p194-171.pdf)

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|--|---|---|---|---|--|
| | One tribe/tribal grouping reported | Two or more tribes/tribal groupings reported ¹ | One tribe/tribal grouping reported | Two or more tribes/tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | (5) |
| American Indian and Alaska Native (300, A01-Z99) Total¹ | 2,870,645 | 123,908 | 2,205,535 | 166,537 | 5,366,625 |
| American Indian and Alaska Native (300, A01-Z99) Total population | 2,870,645 | 61,603 | 2,205,535 | 82,796 | 5,220,579 |
| Abenaki tribal grouping (A01-A04) | 2,065 | 139 | 3,599 | 406 | 6,209 |
| Abenaki Nation of Missisquoi (A01) | 2,041 | 138 | 3,571 | 401 | 6,151 |
| Koasek (Cowasuck) Traditional Band of the Sovereign Abenaki Nation (A02) | 24 | 1 | 28 | 5 | 58 |
| Algonquian tribal grouping (A05-A09) | 905 | 180 | 2,499 | 552 | 4,136 |
| Apache tribal grouping (A09-A23) | 63,193 | 6,501 | 33,303 | 8,813 | 111,810 |
| Apache (A09) | 26,934 | 6,049 | 27,702 | 8,495 | 69,180 |
| Fort Sill Apache (Chincha) (A11) | 1,637 | 94 | 1,333 | 143 | 3,207 |
| Jicarilla Apache Nation (A12) | 3,593 | 121 | 474 | 40 | 4,228 |
| Lipan Apache (A13) | 1,308 | 36 | 412 | 37 | 1,793 |
| Mescalero Apache Tribe of the Mescalero Reservation, New Mexico (A14) | 5,311 | 196 | 1,936 | 140 | 7,583 |
| Apache Tribe of Oklahoma (A15) | 492 | 23 | 208 | 16 | 739 |
| Tonto Apache Tribe of Arizona (A16) | 118 | - | 19 | - | 137 |
| San Carlos Apache Tribe of the San Carlos Reservation (A17) | 10,331 | 62 | 485 | 22 | 10,900 |
| White Mountain Apache Tribe of the Fort Apache Reservation, Arizona (A18) | 13,398 | 69 | 681 | 29 | 14,177 |
| Arapaho tribal grouping (A24-A33) | 8,014 | 388 | 2,084 | 375 | 10,861 |
| Arapaho (A24) | 2,471 | 352 | 1,654 | 362 | 4,839 |
| Northern Arapaho (A25) | 5,460 | 30 | 400 | 9 | 5,899 |
| Southern Arapaho (A26) | 60 | 8 | 22 | 4 | 94 |
| Arapaho Tribe of the Wind River Reservation, Wyoming (A27) | 22 | - | 7 | 2 | 31 |
| Assiniboine tribal grouping (A34-A37) | 3,156 | 215 | 782 | 92 | 4,245 |
| Assiniboine Sioux tribal grouping (A38-A44) | 7,098 | 53 | 963 | 27 | 8,141 |
| Assiniboine Sioux (A38) | 1,507 | 35 | 543 | 11 | 2,096 |
| Fort Peck Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (A39) | 3,775 | 20 | 222 | 11 | 4,028 |
| Fort Peck Assiniboine (A40) | 471 | 4 | 73 | 2 | 550 |
| Fort Peck Sioux (A41) | 1,338 | 8 | 125 | 3 | 1,474 |
| Blackfeet Tribe of the Blackfeet Indian Reservation of Montana (A45-A50) | 27,279 | 4,519 | 54,109 | 19,397 | 105,304 |
| Brotherton tribal grouping (A51-A52) | 934 | 30 | 969 | 27 | 1,960 |
| Burt Lake tribal grouping (A53-A56) | 187 | - | 56 | - | 243 |
| Burt Lake Chippewa (A53) | 1 | - | 2 | - | 3 |
| Burt Lake Band of Ottawa and Chippewa Indians (A54) | 182 | - | 49 | - | 231 |
| Burt Lake Ottawa (A55) | 4 | - | 5 | - | 9 |
| Caddo tribal grouping (A56-A60) | 3,189 | 210 | 1,736 | 155 | 5,290 |
| Caddo (A56) | 2,644 | 203 | 1,493 | 149 | 4,489 |
| Caddo Nation of Oklahoma (A57) | 102 | 3 | 64 | 8 | 177 |
| Caddo Adais Indians (A58) | 443 | 4 | 177 | 2 | 626 |
| Cahuilla tribal grouping (A61-A74) | 2,996 | 145 | 985 | 112 | 4,238 |
| Agua Caliente Band of Cahuilla Indians (A61) | 80 | - | 23 | - | 103 |
| Augustine Band of Cahuilla Indians (A62) | 1 | - | 11 | - | 12 |
| Cabazon Band of Mission Indians (A63) | 29 | - | 14 | - | 43 |
| Cahuilla (A64) | 1,196 | 135 | 494 | 99 | 1,924 |
| Los Coyotes Band of Cahuilla and Cupeno Indians (A65) | 192 | 6 | 55 | 3 | 256 |
| Morongo Band of Cahuilla Mission Indians (A66) | 1,026 | 20 | 296 | 11 | 1,353 |
| Santa Rosa Band of Cahuilla Indians (A67) | 84 | - | 17 | - | 101 |
| Torres-Martinez Desert Cahuilla Indians (A68) | 362 | 10 | 69 | 5 | 446 |
| Ramona Band or Village of Cahuilla (A69) | 16 | 1 | 4 | 1 | 22 |
| California Tribes tribal grouping (A75-A90, A92-B03) | 1,404 | 280 | 609 | 113 | 2,406 |
| Cahto Indian Tribe of the Laytonville Rancheria (A75) | 167 | 23 | 63 | 6 | 259 |
| Chimarko (A76) | 19 | 1 | 37 | 3 | 60 |
| Kawaisu (A79) | 35 | 6 | 9 | 10 | 60 |
| Kern River Paiute Council (A80) | 155 | 10 | 57 | 3 | 225 |
| Mattole (A81) | 29 | 19 | 40 | 8 | 96 |
| Red Wood (A82) | 1 | 7 | 6 | 4 | 18 |
| Santa Rosa Indian Community (A83) | 67 | 42 | 25 | 4 | 138 |
| Takelma (A84) | 5 | 3 | 7 | 1 | 16 |
| Wappo (A85) | 168 | 21 | 88 | 14 | 291 |
| Yana (A86) | 29 | 8 | 28 | 18 | 83 |
| Yuki (A87) | 255 | 119 | 156 | 39 | 569 |
| Bear River Band of Rohnerville Rancheria (A88) | 215 | 22 | 58 | 1 | 296 |
| California Valley Miwok Tribe (A89) | 35 | - | 8 | - | 43 |
| Redding Rancheria, California (A90) | 69 | 8 | 11 | 3 | 91 |
| Cher-Ae Heights Indian Community of the Trinidad Rancheria (A92) | 151 | 5 | 15 | 1 | 172 |
| Canadian and French American Indian tribal grouping (T01-V23) | 6,433 | 618 | 6,981 | 790 | 14,822 |
| Canadian Indian (T01) | 754 | 83 | 1,152 | 103 | 2,092 |
| French Canadian/French American Indian (T02) | 699 | 66 | 1,739 | 146 | 2,650 |
| Abenaki Canadian (T03) | 5 | - | 6 | - | 11 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|---|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Acadia Band (T04) | 16 | 2 | 29 | 2 | 49 |
| Ache Dene Koe (T05) | - | - | 1 | - | 1 |
| Ahousait (T06) | 11 | 1 | 6 | - | 18 |
| Alderville First Nation (T07) | 11 | 2 | 1 | - | 14 |
| Alexandria Band (T08) | - | - | 1 | - | 1 |
| Algonquins of Barriere Lake (T09) | 2 | 2 | 1 | 8 | 13 |
| Batchewana First Nation (T10) | 27 | 2 | 15 | - | 44 |
| Beardys and Okemasis Band (T11) | 8 | - | 3 | 1 | 12 |
| Beausoleil (T12) | 1 | - | 1 | - | 2 |
| Beecher Bay (T13) | 4 | - | - | - | 4 |
| Beothuk (T14) | 2 | - | 2 | 2 | 6 |
| Bella Coola (Nuxalk Nation) (T15) | 8 | - | 10 | 1 | 19 |
| Big Cove (T16) | 4 | - | 1 | - | 5 |
| Big Grassy (T17) | 2 | 1 | 6 | - | 9 |
| Bigstone Cree Nation (T18) | 5 | - | 3 | 1 | 9 |
| Bonaparte Band (T19) | 16 | 2 | 4 | 1 | 23 |
| Boston Bar First Nation (T20) | 5 | - | 7 | - | 12 |
| Bridge River (T21) | - | - | - | - | - |
| Brokenhead Ojibway Nation (T22) | 6 | - | - | - | 6 |
| Buffalo Point Band (T23) | 1 | 1 | 2 | - | 4 |
| Caldwell (T24) | 13 | - | 5 | - | 18 |
| Campbell River Band (T25) | - | - | - | - | - |
| Cape Mudge Band (T26) | 1 | - | 2 | - | 3 |
| Carcross/Tagish First Nation (T27) | 2 | 1 | - | - | 3 |
| Caribou (T28) | 4 | 1 | 5 | 1 | 11 |
| Carrier Nation (T29) | 23 | 9 | 16 | - | 48 |
| Carry the Kettle Band (T30) | 7 | - | 1 | - | 8 |
| Cheam Band (T31) | 2 | 2 | 2 | 1 | 7 |
| Chemainus First Nation (T32) | 19 | - | 11 | 1 | 31 |
| Chilcotin Nation (T33) | 8 | 3 | 10 | - | 21 |
| Chippewa/Ojibwe Canadian (T34) | 121 | 4 | 77 | 6 | 208 |
| Chippewa of Samia (T35) | 66 | 1 | 26 | 2 | 95 |
| Chippewa of the Thames (T36) | 65 | 1 | 27 | - | 93 |
| Clayoquot (T37) | 8 | 2 | 4 | 2 | 16 |
| Cold Lake First Nations (T38) | 3 | - | - | - | 3 |
| Coldwater Band (T39) | 2 | 1 | 2 | 1 | 6 |
| Comox Band (T40) | - | - | - | - | - |
| Coquitlam Band (T41) | - | - | 1 | - | 1 |
| Cote First Nation (T42) | 5 | 3 | 2 | - | 10 |
| Couchiching First Nation (T43) | 36 | - | 26 | 3 | 65 |
| Covessess Band (T44) | 4 | 2 | 8 | - | 14 |
| Cowichan (T45) | 154 | 33 | 175 | 29 | 391 |
| Cree Canadian (T46) | 96 | 25 | 133 | 29 | 283 |
| Cross Lake First Nation (T47) | 1 | 1 | 7 | 2 | 11 |
| Curve Lake Band (T48) | 4 | 3 | 1 | - | 8 |
| Dene Canadian (T49) | 45 | 29 | 14 | 5 | 93 |
| Dene Band Nwt (Nw Terr.) (T50) | 1 | - | - | - | 1 |
| Ditidaht Band (T51) | 10 | - | 4 | - | 14 |
| Dogrib (T52) | 8 | 1 | 3 | 1 | 13 |
| Eagle Lake Band (T53) | - | - | - | - | - |
| Eastern Cree (T54) | 2 | - | 4 | 1 | 7 |
| Ebb and Flow Band (T55) | - | - | 2 | - | 2 |
| English River First Nation (T56) | - | - | - | - | - |
| Eskasoni (T57) | 2 | 5 | 4 | - | 11 |
| Esquimat (T58) | 1 | - | - | - | 1 |
| Fisher River (T59) | 4 | 2 | 1 | - | 7 |
| Five Nations (T60) | 14 | - | 3 | - | 17 |
| Fort Alexander Band (T61) | 6 | - | 2 | - | 8 |
| Garden River Nation (T62) | 17 | 3 | 6 | 1 | 27 |
| Gibson Band (T63) | - | - | 2 | - | 2 |
| Gitksan (T64) | 11 | 1 | 14 | 2 | 28 |
| Gitlakdamix Band (T65) | 3 | - | 2 | - | 5 |
| Grassy Narrows First Nation (166) | - | - | - | - | - |
| Gull Bay Band (T67) | 5 | - | - | - | 5 |
| Gwichya Gwich'in (T68) | 4 | 7 | 3 | - | 14 |
| Heiltsuk Band (T69) | 4 | - | 4 | - | 8 |
| Hesquiaht Band (T70) | 4 | - | 1 | - | 5 |
| Hiawatha First Nation (T71) | 2 | 1 | 4 | 5 | 12 |
| Hope Band (Chawathil Nation) (T72) | 1 | - | - | - | 1 |
| Huron (T73) | 431 | 58 | 720 | 164 | 1,373 |
| Huron of Lometteville (T74) | 1 | - | - | - | 1 |
| Innu (Montagnais) (T75) | 10 | 4 | 51 | 5 | 70 |
| Interior Salish (T76) | 8 | - | 4 | 1 | 13 |
| James Bay Cree (T77) | 2 | - | 1 | - | 3 |
| James Smith Cree Nation (T78) | 2 | - | 1 | - | 3 |
| Katikwesi/Sataw First Nation (T79) | 4 | - | 2 | 1 | 7 |
| Kamloops Band (T80) | 13 | - | 2 | - | 15 |
| Kanaka Bar (T81) | 12 | - | 8 | 1 | 21 |
| Kanesatake Band (T82) | 5 | - | 3 | - | 8 |
| Kaska Dena (T83) | 5 | 5 | - | - | 10 |
| Keeseekooseland Band (T84) | 5 | - | 6 | - | 11 |
| Kincolth Band (T85) | - | - | - | - | - |
| Kingsclear Band (T86) | 4 | - | - | - | 4 |
| Kitamaat (T87) | 8 | - | 2 | 1 | 11 |
| Kitigan Zibi Anishinabeg (T88) | 37 | 1 | 12 | 5 | 55 |
| Klahoose First Nation (T89) | 15 | 1 | 9 | - | 25 |
| Kwakiutl (T90) | 11 | 2 | 31 | - | 44 |
| Kyuquot Band (T91) | 13 | - | 9 | 1 | 23 |
| Lakshamen Band (T92) | 1 | - | - | - | 1 |
| Lake Manitoba Band (T93) | 5 | - | 2 | 2 | 9 |
| Lake St. Martin Band (T94) | 1 | - | - | - | 1 |
| Lennox Island Band (T95) | 1 | - | - | 1 | 2 |
| Liard River First Nation (T96) | 4 | 1 | 3 | - | 8 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|---|---|---|---|---|--|
| | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Lillooet (T97) | 3 | - | 5 | 1 | 9 |
| Little Shuswap Band (T98) | - | - | - | - | - |
| Long Plain First Nation (T99) | 9 | - | - | 2 | 11 |
| Lower Nicola Indian Band (U01) | 19 | - | 16 | - | 35 |
| Malahat First Nation (U02) | - | 2 | - | 1 | 3 |
| Matachewan Band (U03) | - | 1 | - | - | 1 |
| Mileod Lake (U04) | 4 | - | 4 | - | 8 |
| Metis (U05) | 984 | 140 | 794 | 158 | 2,076 |
| Millbrook First Nation (U06) | - | 1 | - | - | 1 |
| Mississaugas of the Credit (U07) | 33 | 2 | 20 | 2 | 57 |
| Mohawk Bay of Quinte (U08) | 137 | 2 | 47 | 1 | 187 |
| Mohawk Canadian (U09) | 59 | 5 | 56 | 2 | 122 |
| Mohawk Kahnawake (U10) | 208 | 6 | 96 | 2 | 312 |
| Mohican Canadian (U11) | 3 | - | 4 | 1 | 8 |
| Musqueam Band (U12) | 20 | - | 6 | 2 | 28 |
| Namgis First Nation (Nimkish) (U13) | 1 | - | 7 | - | 8 |
| Nanaimo (Snuneymuxw) (U14) | 25 | 1 | 12 | 1 | 39 |
| Nanoose First Nation (U15) | 7 | - | 1 | - | 8 |
| Naskapi (U16) | 2 | - | - | 1 | 3 |
| Nation Huronne Wendat (U17) | 26 | 5 | 37 | 5 | 73 |
| Nipissing First Nation (U18) | 6 | - | 15 | 2 | 23 |
| North Thompson Band (Simpow First Nation) (U19) | 3 | - | - | - | 3 |
| N'Quatqua (Anderson Lake) (U20) | 4 | 43 | 8 | 10 | 65 |
| Nuu-chah-nulth (Nootka) (U21) | 44 | - | 14 | 5 | 63 |
| Odanak (U22) | 36 | 1 | 17 | 2 | 56 |
| Ojibwa (U23) | 4 | - | 1 | - | 5 |
| Oneida Nation of the Thames (U24) | 87 | 2 | 33 | - | 122 |
| Opaskwayak Cree Nation (U25) | 7 | - | 3 | - | 10 |
| Osoyoos Band (U26) | 5 | 2 | 4 | - | 11 |
| Pacheedaht First Nation (U27) | 8 | 3 | 22 | - | 33 |
| Pauquachin (U28) | 10 | 4 | 5 | - | 19 |
| Peepeekisis (U29) | - | - | 1 | - | 1 |
| Peguis (U30) | 15 | 3 | 10 | 1 | 29 |
| Penelakut (U31) | 4 | 2 | - | 1 | 7 |
| Penticton (U32) | 9 | 5 | 7 | - | 21 |
| Pine Creek (U33) | 4 | - | 2 | - | 6 |
| Plains Cree (U34) | 20 | 4 | 9 | 2 | 35 |
| Rainy River First Nations (U35) | 10 | 1 | 8 | - | 19 |
| Red Earth Band (U36) | - | - | - | 1 | 1 |
| Restigouche (Listugaj First Nation) (U37) | 7 | - | - | 2 | 9 |
| Roseau River (U38) | 37 | 5 | 8 | - | 50 |
| Saddle Lake (U39) | 1 | 5 | 3 | 1 | 10 |
| Sakimay First Nations (U40) | 6 | - | 1 | - | 7 |
| Sandy Bay Band (U41) | 1 | - | - | - | 1 |
| Sarcee (Sarci) (U42) | 1 | - | 1 | 2 | 4 |
| Saugeen (U43) | 3 | - | 6 | 2 | 11 |
| Saulteau First Nations (U44) | 5 | - | 3 | 1 | 9 |
| Saulteaux (U45) | 34 | 6 | 13 | 9 | 62 |
| Seabird Island (U46) | 2 | 2 | 1 | - | 5 |
| Sechelt (U47) | 29 | 2 | 23 | 2 | 56 |
| Seine River First Nation (U48) | 15 | 1 | - | - | 16 |
| Serpent River (U49) | 11 | - | 6 | 1 | 18 |
| Seton Lake (U50) | 3 | - | 2 | - | 5 |
| Shoal Lake Cree Nation (U51) | - | - | - | - | - |
| Shuswap (U52) | 113 | 9 | 58 | 15 | 195 |
| Similkameen (U53) | 17 | - | 6 | - | 23 |
| Siksika Canadian (U54) | 100 | 10 | 203 | 14 | 327 |
| Six Nation Canadian (U55) | 11 | 4 | 4 | - | 19 |
| Six Nations of the Grand River (U56) | 6 | 1 | 3 | 1 | 11 |
| Skawahook First Nation (U57) | - | - | 4 | - | 4 |
| Skeetchestn Indian Band (U58) | 1 | - | 1 | - | 2 |
| Skookum Chuck Band (U59) | 5 | 3 | 4 | - | 12 |
| Skowkoke (U60) | 1 | - | 1 | - | 2 |
| Skuppah (U61) | - | - | - | - | - |
| Skawah First Nation (U62) | 2 | - | 10 | - | 12 |
| Skway First Nation (U63) | - | 4 | 2 | 4 | 10 |
| Songhees First Nation (U64) | 7 | - | 13 | - | 20 |
| Soowahle First Nation (U65) | 5 | - | 1 | 2 | 8 |
| Spuzzum First Nation (U66) | 2 | - | 4 | 2 | 8 |
| Squamish Nation (U67) | 106 | 13 | 128 | 22 | 269 |
| Starijkoming First Nation (U68) | - | - | - | - | - |
| Sto lo Nation (U69) | 63 | 8 | 47 | 7 | 125 |
| Stone (U70) | 1 | 1 | 1 | 2 | 5 |
| Sucker Creek First Nation (U71) | 3 | - | 3 | - | 6 |
| Swampy Cree (U72) | 11 | - | 11 | - | 22 |
| Tatitani (U73) | 22 | 3 | 19 | 1 | 45 |
| Taku River Tlingit (U74) | 4 | 1 | - | - | 5 |
| Tete De Boule (Atlikamek) (U75) | 1 | - | 1 | - | 2 |
| Thompson (U76) | 62 | 7 | 39 | 8 | 116 |
| Tobacco Plains Band (U77) | 3 | - | 5 | 3 | 11 |
| Tobique First Nation (U78) | 39 | 2 | 21 | 1 | 63 |
| Toquaht (U79) | 2 | - | 3 | 3 | 8 |
| Tsartlip (U80) | 8 | - | 4 | 1 | 13 |
| Tsawout First Nation (U81) | 8 | 1 | 9 | - | 18 |
| Tseyoum (U82) | 2 | 3 | 3 | - | 8 |
| Uchuckkasaht (U83) | 10 | - | 6 | 1 | 17 |
| Ucluellet First Nation (U84) | 8 | - | 4 | - | 12 |
| Vuntut Gwitchin First Nation (U85) | 3 | - | - | - | 3 |
| Wabauskang First Nation (U86) | 1 | - | 4 | 1 | 6 |
| Waipole Island (U87) | 121 | 4 | 41 | 5 | 171 |
| Wasauksing First Nation (U88) | 11 | - | 1 | - | 12 |
| Waywayseecappo First Nation (U89) | 2 | - | 1 | - | 3 |
| West Bay Band (U90) | - | 1 | 3 | - | 6 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|--|---|--|---|--|--|
| | One tribe/trial grouping reported | Two or more tribes/trial groupings reported ¹ | One tribe/trial grouping reported | Two or more tribes/trial groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| White Bear Band (U91) | 8 | - | 5 | - | 13 |
| Whitefish Lake Band (U92) | 4 | - | - | 2 | 6 |
| Wilwemikong (U93) | 76 | 5 | 49 | 6 | 136 |
| Wolf Lake Band (U94) | 3 | 1 | 1 | 1 | 6 |
| Woodland Cree First Nation (U95) | 10 | 6 | 18 | 4 | 38 |
| Woodstock First Nation (U96) | 6 | 1 | 14 | 1 | 22 |
| Xaxli'p First Nation (Fountain Band) (U97) | 14 | - | 6 | - | 20 |
| Canadian Indian, not elsewhere classified (U98) | 532 | 50 | 359 | 48 | 989 |
| Catawba Indian Nation tribal grouping (B04-B06) | 2,025 | 79 | 1,077 | 189 | 3,370 |
| Cayuse tribal grouping (B07-B10) | 104 | 117 | 52 | 31 | 304 |
| Central American Indian tribal grouping (V24-V83) | 15,882 | 572 | 10,865 | 525 | 27,844 |
| Central American Indian (V24) | 2,348 | 55 | 1,554 | 51 | 4,008 |
| Cakchiquel (V25) | 76 | 71 | 43 | 5 | 195 |
| Carib (V26) | 936 | 66 | 1,592 | 224 | 2,818 |
| Choco (V27) | 25 | 2 | 37 | 5 | 69 |
| Garifuna (V28) | 2,954 | 18 | 3,869 | 42 | 6,883 |
| Guaymi (V29) | 23 | 1 | 74 | 10 | 108 |
| Kanjobal (V30) | 105 | 108 | 26 | 16 | 255 |
| Kekchi (V31) | 48 | 25 | 16 | 8 | 97 |
| Kuna Indian (V32) | 111 | 8 | 155 | 16 | 290 |
| Lenca (V33) | 212 | 38 | 131 | 23 | 404 |
| Maya Central American (V34) | 1,889 | 242 | 408 | 125 | 2,664 |
| Miskito (V35) | 336 | 20 | 248 | 21 | 625 |
| Pipil (V36) | 643 | 177 | 502 | 104 | 1,426 |
| Quiche (V37) | 1,197 | 67 | 306 | 35 | 1,605 |
| Rama (V38) | 8 | 2 | 21 | - | 31 |
| Sumo (V39) | - | 1 | 6 | - | 7 |
| Belize Indian (V40) | 12 | - | 11 | - | 23 |
| Costa Rica Indian (V41) | 48 | 1 | 79 | 6 | 134 |
| Dominican Indian (V42) | 1,499 | 11 | 434 | 14 | 1,958 |
| El Salvador Indian (V43) | 377 | 5 | 150 | 8 | 540 |
| Guatemala Indian (V44) | 1,534 | 39 | 352 | 33 | 1,958 |
| Honduras Indian (V45) | 394 | 4 | 160 | 1 | 559 |
| Nicaragua Indian (V46) | 182 | 19 | 103 | 6 | 310 |
| Panama Indian (V47) | 57 | 3 | 126 | 6 | 192 |
| Puerto Rican Indian (V48) | 652 | 35 | 341 | 15 | 1,043 |
| Confederated Tribes of the Chehalis Reservation, Washington tribal grouping (B11-B13) | 639 | 17 | 181 | 16 | 853 |
| Chemakuan tribal grouping (B14-B18) | 759 | 16 | 238 | 21 | 1,034 |
| Chemakuan (B14) | 8 | - | 4 | 1 | 13 |
| Hoh Indian Tribe of the Hoh Reservation, Washington (B15) | 152 | 4 | 49 | 2 | 207 |
| Quileute Tribe of the Quileute Reservation, Washington (B16) | 598 | 14 | 185 | 18 | 815 |
| Chemehuevi Indian tribal grouping (B19-B20) | 834 | 39 | 314 | 14 | 1,201 |
| Cherokee tribal grouping (B21-B39) | 284,247 | 16,216 | 468,082 | 50,560 | 819,105 |
| Cherokee (B21) | 248,519 | 16,136 | 452,122 | 50,418 | 767,195 |
| Cherokee Alabama (B22) | 103 | 3 | 94 | 14 | 214 |
| Cherokee Tribe of Northeast Alabama (B23) | 674 | 10 | 239 | - | 923 |
| Cher-O-Creek Intra-tribal Indians (Cherokees of Southeast Alabama) (B24) | 233 | 10 | 145 | 11 | 399 |
| Eastern Band of Cherokees (B25) | 8,893 | 58 | 2,824 | 60 | 11,835 |
| Echota Cherokee Tribe of Alabama (B26) | 4,396 | 18 | 1,998 | 16 | 6,428 |
| Georgia Eastern Cherokee (B27) | 67 | 4 | 23 | - | 94 |
| Northern Cherokee Nation of Missouri and Arkansas (B28) | 1,043 | 17 | 1,008 | 6 | 2,074 |
| Tuscola (B29) | 28 | 1 | 7 | - | 36 |
| United Keetoowah Band of Cherokee (B30) | 2,406 | 120 | 258 | 33 | 2,817 |
| Cherokee Nation of Oklahoma (Western Cherokee) (B31) | 15,481 | 192 | 8,555 | 152 | 24,380 |
| Southeastern Cherokee Council (B32) | 61 | 1 | 35 | 1 | 98 |
| Sac River Band of the Chickamauga-Cherokee (B33) | 1 | 1 | 8 | 2 | 12 |
| White River Band of the Chickamauga-Cherokee (B34) | 47 | 2 | 26 | 2 | 77 |
| Four Winds Cherokee (B35) | 789 | 10 | 263 | 8 | 1,070 |
| Cherokee of Georgia (B36) | 191 | 5 | 164 | 4 | 364 |
| Piedmont American Indian Association-Lower Eastern Cherokee Nation SC (PAIA) (B37) | 137 | 8 | 27 | 1 | 173 |
| United Cherokee Ani-Yun-Wiya Nation (B38) | 970 | 10 | 183 | 4 | 1,167 |
| Cherokee Bear Clan of South Carolina (B39) | 13 | 4 | 17 | 2 | 36 |
| Cheyenne tribal grouping (B40-B46) | 11,375 | 1,118 | 5,311 | 1,247 | 19,051 |
| Cheyenne (B40) | 4,900 | 1,021 | 4,019 | 1,225 | 11,165 |
| Northern Cheyenne Tribe of the Northern Cheyenne Reservation, Montana (B41) | 6,201 | 87 | 1,195 | 19 | 7,502 |
| Southern Cheyenne (B42) | 272 | 14 | 97 | 4 | 387 |
| Cheyenne and Arapaho Tribes, Oklahoma tribal grouping (B46-B48) | 5,091 | 131 | 1,375 | 34 | 6,631 |
| Chickahominy tribal grouping (B49-B52) | 988 | 19 | 563 | 55 | 1,625 |
| Chickahominy Indian Tribe (B49) | 942 | 19 | 540 | 53 | 1,554 |
| Chickahominy Eastern Band (B50) | 46 | - | 22 | 4 | 72 |
| Chickasaw tribal grouping (B53-B56) | 27,973 | 2,233 | 19,220 | 2,852 | 52,278 |
| Chickasaw Nation (B53) | 27,926 | 2,231 | 19,214 | 2,843 | 52,214 |
| Chaloklwa Chickasaw (B54) | 47 | 2 | 6 | 9 | 64 |
| Chinook tribal grouping (B57-B66) | 798 | 106 | 1,150 | 166 | 2,220 |
| Chinook (B57) | 766 | 74 | 1,097 | 144 | 2,081 |
| Clatsop (B58) | 26 | 31 | 41 | 24 | 122 |
| Columbia River Chinook (B59) | - | 1 | 1 | - | 2 |
| Kathlamet (B60) | - | - | - | 1 | 1 |
| Upper Chinook (B61) | - | - | 1 | 3 | 4 |
| Wakiamum Chinook (B62) | - | - | - | - | - |
| Willapa Chinook (B63) | 2 | 1 | 3 | - | 6 |
| Wishram (B64) | 3 | 1 | 4 | - | 8 |
| Chippewa tribal grouping (B67-B99) | 112,757 | 2,645 | 52,091 | 3,249 | 170,742 |
| Bad River Band of the Lake Superior Tribe (B67) | 3,073 | 26 | 1,086 | 6 | 4,191 |
| Bay Mills Indian Community (B68) | 1,141 | 2 | 232 | 1 | 1,376 |
| Bois Forte Band of Chippewa (B69) | 1,717 | 10 | 365 | 4 | 2,096 |
| Chippewa (B71) | 36,567 | 2,663 | 31,048 | 3,193 | 73,471 |
| Fond du Lac (B72) | 2,308 | 22 | 712 | 8 | 3,050 |
| Orend Portage (B73) | 595 | 3 | 165 | 3 | 766 |
| Grand Traverse Band of Ottawa and Chippewa Indians (B74) | 2,060 | 12 | 590 | 6 | 2,668 |
| Keweenaw Bay Indian Community (B75) | 1,326 | 23 | 510 | 10 | 1,869 |
| Lac Courte Oreilles Band of Lake Superior Chippewa (B76) | 3,137 | 24 | 1,073 | 3 | 4,237 |
| Lac du Flambeau (B77) | 1,013 | 21 | 186 | 8 | 1,228 |

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|---|---|---|---|---|--|
| | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Lac Vieux Desert Band of Lake Superior Chippewa Indians (B78) | 349 | 5 | 60 | 2 | 416 |
| Lake Superior Chippewa (B79) | 243 | 24 | 107 | 5 | 379 |
| Leech Lake (B80) | 4,578 | 68 | 888 | 35 | 5,569 |
| Little Shell Tribe of Chippewa Indians of Montana (B81) | 1,254 | 100 | 830 | 71 | 2,255 |
| Millie Lacs (B82) | 2,348 | 15 | 408 | 12 | 2,783 |
| Minnesota Chippewa (B83) | 2,195 | 27 | 771 | 5 | 2,998 |
| Red Cliff Band of Lake Superior Chippewa (B85) | 2,174 | 11 | 724 | 5 | 2,914 |
| Red Lake Band of Chippewa Indians (B86) | 7,459 | 57 | 887 | 18 | 8,421 |
| Saginaw Chippewa Indian Tribe (B87) | 2,770 | 20 | 1,031 | 11 | 3,832 |
| St. Croix Chippewa (B88) | 1,002 | 8 | 283 | 6 | 1,299 |
| Sault Ste. Marie Tribe of Chippewa Indians (B89) | 12,111 | 127 | 4,254 | 79 | 16,571 |
| Sokaogon Chippewa Community (B90) | 358 | 5 | 142 | 8 | 513 |
| Turtle Mountain Band of Chippewa Indians of North Dakota (E91) | 16,542 | 122 | 2,832 | 71 | 19,567 |
| White Earth (B92) | 5,954 | 150 | 2,689 | 90 | 8,883 |
| Swan Creek Black River Confederate Tribe (B93) | 35 | 9 | 12 | 4 | 60 |
| Chippewa-Cree Indians of the Rocky Boy's Reservation tribal grouping (C01-C04) | 6,058 | 130 | 1,631 | 99 | 7,918 |
| Chitimacha tribal grouping (C05-C07) | 1,340 | 35 | 480 | 33 | 1,888 |
| Chitimacha Tribe of Louisiana (C05) | 1,036 | 36 | 448 | 32 | 1,552 |
| Pointe Au-Chien Indian Tribe (C06) | 303 | 1 | 32 | 1 | 337 |
| Choctaw tribal grouping (C08-C16) | 103,910 | 6,398 | 72,101 | 13,355 | 195,764 |
| Choctaw (C08) | 75,091 | 6,224 | 65,083 | 13,232 | 159,630 |
| Clifton Choctaw (C09) | 105 | 2 | 64 | 7 | 178 |
| Jena Band of Choctaw (C10) | 156 | 1 | 47 | 1 | 205 |
| Mississippi Band of Choctaw Indians (C11) | 7,471 | 168 | 1,283 | 57 | 8,979 |
| MOVA Band of Choctaw Indians (C12) | 2,542 | 11 | 315 | 4 | 2,872 |
| Choctaw Nation of Oklahoma (C13) | 18,464 | 158 | 5,296 | 82 | 24,000 |
| Choctaw-Apache Community of Ebarb tribal grouping (C17-C19) | 2,017 | 31 | 768 | 50 | 2,866 |
| Chumash tribal grouping (C20-C24) | 4,912 | 400 | 3,289 | 267 | 8,868 |
| Chumash (C20) | 4,608 | 355 | 3,173 | 255 | 8,391 |
| Santa Ynez Band of Chumash Mission Indians (C21) | 184 | 6 | 50 | 3 | 243 |
| San Luis Rey Mission Indian (C22) | 115 | 49 | 63 | 15 | 242 |
| Clear Lake (C25) | 1 | - | 1 | - | 2 |
| Coeur D'Alene tribal grouping (C26-C28) | 1,600 | 20 | 464 | 17 | 2,101 |
| Coharie Indian tribal grouping (C29-C31) | 1,592 | 54 | 473 | 43 | 2,162 |
| Colorado River Indian Tribes tribal grouping (C32-C34) | 2,100 | 12 | 249 | 9 | 2,370 |
| Confederated Tribes of the Colville Reservation tribal grouping (C35-C38) | 8,114 | 200 | 2,148 | 87 | 10,549 |
| Comanche Nation, Oklahoma tribal grouping (C39-C43) | 12,284 | 1,187 | 8,131 | 1,728 | 23,330 |
| Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians tribal grouping (C44-C46) | 185 | 10 | 82 | 3 | 280 |
| Coos (C46) | 202 | 35 | 140 | 19 | 396 |
| Coquille Indian tribal grouping (C47-C48) | 483 | 6 | 196 | 4 | 689 |
| Costanoan tribal grouping (C49-C51) | 2,202 | 162 | 1,363 | 126 | 3,853 |
| Coushatta tribal grouping (C52-C55) | 1,781 | 31 | 693 | 68 | 2,573 |
| Alabama-Coushatta Tribes of Texas (C52) | 1,020 | 12 | 258 | 9 | 1,299 |
| Coushatta (C53) | 761 | 19 | 435 | 59 | 1,274 |
| Cowlitz Indian tribal grouping (C56-C58) | 1,506 | 30 | 1,182 | 50 | 2,768 |
| Cree tribal grouping (C59-C63) | 2,211 | 739 | 4,023 | 1,010 | 7,983 |
| Creek tribal grouping (C64-C80) | 48,352 | 4,596 | 30,618 | 4,766 | 88,332 |
| Alabama Creek (C64) | 12 | - | 27 | 3 | 42 |
| Alabama Quassarte Tribal Town (C65) | 90 | 17 | 77 | 9 | 193 |
| Muscogee (Creek) Nation (C66) | 43,193 | 4,579 | 29,185 | 4,728 | 81,685 |
| Eastern Creek (C67) | 311 | 8 | 158 | 10 | 487 |
| Eastern Muscogee (C68) | 18 | 5 | 2 | 1 | 26 |
| Kialagee Tribal Town (C69) | 10 | 4 | 1 | 5 | 20 |
| Lower Muscogee Creek Tama Tribal Town (C70) | 1,000 | 16 | 242 | 9 | 1,267 |
| MacHis Lower Creek Indian Tribe (C71) | 956 | 8 | 200 | 5 | 1,169 |
| Poarch Band of Creek Indians (C72) | 2,544 | 25 | 637 | 19 | 3,225 |
| Principal Creek Indian Nation (C73) | 35 | 5 | 30 | 2 | 72 |
| Lower Creek Muscogee Tribe East, Star Clan (C74) | 63 | - | 20 | - | 83 |
| Thlopthlocco Tribal Town (C75) | 76 | 17 | 26 | 1 | 120 |
| Tuckabachee (C76) | - | - | - | - | - |
| Croatan tribal grouping (C81-C82) | 101 | 14 | 215 | 28 | 358 |
| Crow Tribe of Montana tribal grouping (C83-C86) | 10,332 | 528 | 3,309 | 1,034 | 15,203 |
| Cumberland County Association for Indian People tribal grouping (C87-C88) | - | - | - | - | - |
| Cupeno tribal grouping (C89-C92) | 348 | 47 | 159 | 20 | 574 |
| Agua Caliente (C89) | 286 | 13 | 112 | 17 | 428 |
| Cupeno (C90) | 62 | 34 | 47 | 3 | 146 |
| Delaware tribal grouping (C93-D04) | 7,843 | 372 | 9,439 | 610 | 18,264 |
| Delaware (Lenni-Lenape) (C93) | 6,529 | 359 | 8,197 | 553 | 15,638 |
| Delaware Tribe of Indians, Oklahoma (C94) | 73 | 1 | 46 | - | 120 |
| Munsee (C96) | 131 | 13 | 162 | 31 | 337 |
| Delaware Nation (C97) | 111 | 1 | 39 | 8 | 159 |
| Ramapough Lenape Nation (Ramapough Mountain) (C98) | 870 | 15 | 824 | 24 | 1,733 |
| New Jersey Sand Hill Band of Indians, Inc (C99) | 38 | 7 | 75 | 12 | 132 |
| Allegheny Lenape (D01) | 79 | - | 87 | - | 166 |
| Diegueno (Kumeyaay) tribal grouping (D05-D19) | 3,985 | 83 | 1,305 | 59 | 5,432 |
| Barona Group of Capitani Grande Band (D05) | 563 | 5 | 31 | 5 | 604 |
| Campo Band of Diegueno Mission Indians (D06) | 245 | 2 | 81 | 2 | 330 |
| Capitan Grande Band of Diegueno Mission Indians (D07) | 12 | 2 | 4 | 1 | 19 |
| Ewilaapaay Band of Kumeyaay Indians (D08) | 7 | 1 | 1 | 2 | 11 |
| Diegueno (Kumeyaay) (D09) | 772 | 73 | 463 | 48 | 1,356 |
| La Posta Band of Diegueno Mission Indians (D10) | 31 | - | 5 | - | 36 |
| Manzanita Band of Diegueno Mission Indians (D11) | 65 | 1 | 19 | 1 | 86 |
| Mesa Grande Band of Diegueno Mission Indians (D12) | 427 | 10 | 141 | 4 | 582 |
| San Pasqual Band of Diegueno Mission Indians (D13) | 792 | 21 | 282 | 16 | 1,111 |
| Iipay Nation of Santa Ysabel (D14) | 579 | 4 | 149 | 1 | 733 |
| Sycuan Band of the Kumeyaay Nation (D15) | 131 | 1 | 54 | 5 | 191 |
| Viajas (Baron Long) Group of Capitan Grande Band (D16) | 298 | 2 | 43 | 1 | 344 |
| Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation (D17) | 5 | - | - | 1 | 6 |
| Jemut Indian Village (D18) | 40 | - | 18 | - | 58 |
| Eastern Tribes tribal grouping (D20-D26, D28-D41) | 7,141 | 259 | 4,287 | 529 | 12,216 |
| Attacapa (D20) | 349 | 9 | 402 | 15 | 775 |
| Biloxi (D21) | 14 | 10 | 31 | 13 | 68 |
| Georgetown (D22) | 35 | 3 | 3 | 2 | 43 |

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|---|---|---|---|---|--|
| | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Moor (D23) | 93 | 35 | 49 | 30 | 207 |
| Nansemond Indian Tribe (D24) | 152 | 3 | 184 | 17 | 356 |
| Natchez Indian Tribe of South Carolina (Kusso-Natchez, Edisto) (D25) | 587 | 66 | 311 | 55 | 1,019 |
| Nausu Wawash (D26) | 53 | 6 | 32 | 5 | 96 |
| Golden Hill Paugussett (D28) | 53 | 1 | 89 | 4 | 147 |
| Pocomoke Acohonock (D29) | 36 | - | 56 | 14 | 106 |
| Southeastern Indians (D30) | 975 | 72 | 1,013 | 249 | 2,309 |
| Susquehannock (D31) | 99 | 10 | 327 | 48 | 484 |
| Biloxi-Chitimacha-Choctaw Confederation (D32) | 375 | 5 | 56 | - | 436 |
| Tunica Biloxi Indian Tribe of Louisiana (D33) | 669 | 9 | 258 | 15 | 951 |
| Waccamaw Siouan Indian Tribe (D34) | 1,984 | 39 | 457 | 54 | 2,534 |
| Beaver Creek Indians (D35) | 351 | 9 | 148 | 6 | 514 |
| Wicomico (D36) | 9 | - | 14 | 2 | 25 |
| Meherrin Indian Tribe (D37) | 575 | 18 | 601 | 40 | 1,234 |
| Santee Indian Organization (D38) | 34 | - | 8 | - | 42 |
| Santee Indian Nation of South Carolina (D39) | 5 | 1 | 8 | - | 14 |
| Pee Dee Indian Tribe of South Carolina (D40) | 117 | 3 | 24 | 3 | 147 |
| Pee Dee Indian Nation of Upper South Carolina (D41) | 540 | 32 | 187 | 15 | 774 |
| Esselen tribal grouping (D42-D43) | 116 | 43 | 128 | 44 | 331 |
| Fort Belknap Indian Community of the Fort Belknap Reservation (D44) | 496 | 19 | 113 | 9 | 637 |
| Three Affiliated Tribes of North Dakota tribal grouping (D45-D48) | 4,836 | 241 | 1,399 | 133 | 6,609 |
| Three Affiliated Tribes of Ft. Berthold Reservation, North Dakota (D45) | 2,731 | 36 | 597 | 15 | 3,379 |
| Mandan (D46) | 365 | 405 | 251 | 150 | 1,171 |
| Hidatsa (D47) | 555 | 395 | 154 | 97 | 1,201 |
| Anikara (Sahnish) (D48) | 792 | 206 | 315 | 43 | 1,356 |
| Fort McDowell Yavapai Nation tribal grouping (D49-D50) | 729 | 15 | 60 | 4 | 808 |
| Fort Hall tribal grouping (D61-D64) | 4,502 | 97 | 799 | 30 | 5,428 |
| Shoshone-Bannock Tribes of the Fort Hall Reservation (D51) | 4,449 | 92 | 753 | 21 | 5,315 |
| Lemhi-Shoshone (D52) | 14 | 1 | 10 | - | 25 |
| Bannock (D53) | 38 | 6 | 36 | 9 | 89 |
| Gabrieleño (D65) | 1,814 | 101 | 901 | 87 | 2,903 |
| Fernandeno Tataviam Band of Mission Indians (D66) | 292 | 32 | 86 | 6 | 416 |
| Confederated Tribes of the Grand Ronde Community of Oregon (D67) | 3,025 | 60 | 1,172 | 30 | 4,287 |
| Gulford Native American Association tribal grouping (D68-D69) | - | - | 2 | - | 2 |
| Gros Ventres tribal grouping (D60-D63) | 2,952 | 173 | 594 | 55 | 3,774 |
| Atsina (D60) | 2 | - | 1 | - | 3 |
| Gros Ventres (D61) | 2,950 | 173 | 593 | 55 | 3,771 |
| Haliwa-Saponi Indian tribal grouping (D64-D67) | 3,561 | 31 | 1,032 | 38 | 4,662 |
| Ho-Chunk Nation tribal grouping (D68-D69) | 5,134 | 102 | 1,468 | 45 | 6,749 |
| Hoopa tribal grouping (D70-D73) | 2,636 | 113 | 729 | 72 | 3,550 |
| Hoopa Valley Tribe (D70) | 2,631 | 113 | 708 | 71 | 3,523 |
| Trinity (D71) | 3 | - | 10 | - | 13 |
| Whilkut (D72) | 2 | - | 11 | 1 | 14 |
| Hopi tribal grouping (D74-D75) | 12,580 | 2,054 | 3,013 | 680 | 18,327 |
| Hopi Tribe of Arizona (D74) | 12,397 | 2,011 | 2,974 | 668 | 18,050 |
| Arizona Tewa (D75) | 181 | 49 | 39 | 12 | 281 |
| Hoopa Extension tribal grouping (D76-D77) | 1 | 1 | - | - | 2 |
| United Houma Nation tribal grouping (D78-D86) | 8,169 | 71 | 2,438 | 90 | 10,768 |
| Iowa tribal grouping (D87-D90) | 1,659 | 84 | 864 | 73 | 2,680 |
| Iowa (D87) | 988 | 82 | 560 | 73 | 1,703 |
| Iowa Tribe of Kansas and Nebraska (D88) | 503 | 1 | 276 | - | 780 |
| Iowa Tribe of Oklahoma (D89) | 168 | 1 | 28 | - | 197 |
| Sappony (Indians of Person County) tribal grouping (D91-D92) | 719 | 10 | 183 | 3 | 915 |
| Iroquois tribal grouping (D93-E09) | 40,570 | 1,891 | 34,490 | 4,051 | 81,002 |
| Cayuga Nation (D93) | 947 | 107 | 461 | 57 | 1,572 |
| Iroquois (D94) | 2,440 | 366 | 7,191 | 1,377 | 11,374 |
| Mohawk (D95) | 12,727 | 582 | 11,771 | 1,541 | 26,621 |
| Oneida (D96) | 7,595 | 352 | 4,268 | 269 | 12,484 |
| Oneida Nation of New York (E05) | 102 | - | 33 | - | 135 |
| Onondaga Nation (D97) | 1,570 | 53 | 1,111 | 99 | 2,833 |
| Seneca (D98) | 7,011 | 302 | 5,085 | 537 | 12,935 |
| Seneca Nation (D99) | 990 | 31 | 386 | 22 | 1,429 |
| Seneca-Cayuga Tribe of Oklahoma (E01) | 2,124 | 105 | 857 | 41 | 3,127 |
| Tonawanda Band of Seneca Indians (E02) | 277 | 2 | 59 | - | 338 |
| Tuscarora Nation (E03) | 2,364 | 184 | 1,345 | 214 | 4,107 |
| Wyandotte Nation, Oklahoma (E04) | 2,264 | 131 | 1,777 | 194 | 4,366 |
| Juaneno (Acjachemem) tribal grouping (E10-E12) | 2,881 | 87 | 1,247 | 66 | 4,281 |
| Kalispel Indian Community tribal grouping (E13-E16) | 307 | 18 | 69 | 3 | 397 |
| Karuk Tribe of California tribal grouping (E17-E20) | 3,431 | 207 | 2,331 | 146 | 6,115 |
| Kaw Nation tribal grouping (E21-E23) | 1,329 | 123 | 810 | 127 | 2,389 |
| Kickapoo tribal grouping (E24-E29) | 4,193 | 272 | 1,650 | 241 | 6,356 |
| Kickapoo (E24) | 3,415 | 264 | 1,574 | 240 | 5,493 |
| Kickapoo Tribe of Oklahoma (E25) | 248 | 3 | 19 | - | 270 |
| Kickapoo Traditional Tribe of Texas (E26) | 49 | 1 | 6 | - | 56 |
| Kickapoo Tribe of Indians in Kansas (E27) | 481 | 4 | 51 | 1 | 537 |
| Kiowa tribal grouping (E30-E36) | 9,437 | 918 | 2,947 | 485 | 13,787 |
| Kiowa (E30) | 9,077 | 908 | 2,877 | 484 | 13,346 |
| Kiowa Indian Tribe of Oklahoma (E31) | 360 | 12 | 70 | 1 | 443 |
| S'Klallam tribal grouping (E37-E43) | 2,036 | 26 | 763 | 23 | 2,848 |
| Jamesstown S'Klallam Tribe of Washington (E37) | 390 | 7 | 222 | 3 | 622 |
| Klallam (E38) | 389 | 19 | 267 | 15 | 690 |
| Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington (E39) | 566 | 14 | 153 | 11 | 744 |
| Port Gamble S'Klallam Tribe (E40) | 683 | 3 | 117 | 2 | 805 |
| Klamath Indian Tribe of Oregon tribal grouping (E44-E47) | 2,528 | 519 | 1,087 | 279 | 4,413 |
| Konkow tribal grouping (E48-E49) | 334 | 198 | 199 | 124 | 855 |
| Kootenai tribal grouping (E50-E52) | 541 | 76 | 249 | 29 | 895 |
| Kootenai (E50) | 511 | 76 | 238 | 28 | 853 |
| Kootenai Tribe of Idaho (E51) | 30 | - | 11 | 1 | 42 |
| Leasik (E63) | - | - | - | - | - |
| Long Island tribal grouping (E69-E65) | 679 | 43 | 670 | 58 | 1,450 |
| Matinecock (E59) | 37 | 1 | 40 | 4 | 82 |
| Montauk (E60) | 271 | 11 | 359 | 37 | 678 |
| Poospatuck (E61) | 305 | 19 | 256 | 18 | 598 |

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|---|---|--|---|--|--|
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| | (1) | (2) | (3) | (4) | |
| Setauket (E82) | 64 | 16 | 14 | 1 | 95 |
| Luiseno tribal grouping (E86-E77) | 5,067 | 218 | 1,762 | 103 | 7,150 |
| La Jolla Band of Luiseno Mission Indians (E66) | 505 | 5 | 81 | 2 | 593 |
| Luiseno (E87) | 1,121 | 136 | 577 | 82 | 1,916 |
| Pala Band of Luiseno Mission Indians (E68) | 876 | 68 | 347 | 19 | 1,310 |
| Pauma Band of Luiseno Mission Indians (E69) | 208 | 3 | 28 | 3 | 242 |
| Pechanga Band of Luiseno Mission Indians (E70) | 979 | 12 | 377 | 10 | 1,378 |
| Soboba Band of Luiseno Indians (E71) | 798 | 7 | 195 | 2 | 1,002 |
| Twenty-Nine Palms Band of Luiseno Mission Indians (E72) | 12 | - | 1 | - | 13 |
| Temecula (E73) | 99 | 4 | 30 | 5 | 138 |
| Rincon Band of Luiseno Mission Indians (E74) | 450 | 21 | 114 | 4 | 589 |
| Lumbee Indian tribal grouping (E78-E83) | 62,306 | 651 | 10,039 | 695 | 73,691 |
| Lummi tribal grouping (E84-E85) | 3,363 | 98 | 899 | 67 | 4,427 |
| Maidu tribal grouping (E86-E94) | 3,112 | 441 | 1,560 | 259 | 5,372 |
| United Auburn Indian Community (E86) | 45 | 1 | 8 | 1 | 55 |
| Mooretown Rancheria of Maidu Indians (E87) | 354 | 16 | 87 | 6 | 463 |
| Maidu (E88) | 1,723 | 439 | 1,209 | 254 | 3,625 |
| Mountain Maidu (E89) | 31 | 1 | 2 | 1 | 35 |
| Nisenen (Nishinam) (E90) | 10 | 1 | 9 | 1 | 21 |
| Mechoopda Indian Tribe of Chico Rancheria (E91) | 229 | 10 | 69 | - | 308 |
| Berry Creek Rancheria of Maidu Indians (E92) | 344 | 9 | 74 | 3 | 430 |
| Enterprise Rancheria of Maidu Indians (E93) | 298 | 6 | 95 | 1 | 400 |
| Greenville Rancheria of Maidu Indians (E94) | 57 | - | 3 | - | 60 |
| Makah Indian tribal grouping (E95-E99) | 2,031 | 60 | 796 | 23 | 2,910 |
| Maliseet tribal grouping (F01-F08) | 1,029 | 54 | 558 | 50 | 1,691 |
| Maliseet (F01) | 842 | 54 | 513 | 51 | 1,460 |
| Houlton Band of Maliseet Indians (F02) | 187 | - | 44 | 1 | 232 |
| Mattaponi tribal grouping (F09-F10) | 523 | 24 | 474 | 49 | 1,070 |
| Mattaponi Indian Tribe (F09) | 331 | 24 | 387 | 49 | 791 |
| Upper Mattaponi Tribe (F10) | 192 | - | 87 | - | 279 |
| Menominee Indian tribal grouping (F11-F14) | 8,374 | 253 | 2,330 | 176 | 11,133 |
| Metrolina Native American Association tribal grouping (F15-F16) | - | - | - | - | - |
| Mexican American Indian tribal grouping (V84-W66) | 121,221 | 2,329 | 49,670 | 2,274 | 175,494 |
| Amuzgo (V85) | 9 | 1 | 10 | - | 20 |
| Auraca (V86) | 2 | - | 9 | 1 | 12 |
| Aztec (V87) | 20,727 | 1,498 | 9,519 | 1,523 | 33,267 |
| Chatino (V88) | 54 | 3 | 14 | 2 | 73 |
| Chinantec (V89) | 91 | 6 | 41 | 1 | 139 |
| Chocho (V90) | 3 | - | 9 | 1 | 13 |
| Concho (V91) | 3 | 1 | 5 | - | 9 |
| Cora (V92) | 507 | 47 | 208 | 40 | 802 |
| Couhimi (V93) | - | - | 5 | 5 | 10 |
| Cuicattec (V94) | 4 | 1 | 6 | 1 | 12 |
| Huastec (V95) | 101 | 10 | 67 | 1 | 179 |
| Huave (V96) | 1 | - | - | - | 1 |
| Huichol (V97) | 418 | 101 | 254 | 74 | 847 |
| Ixcatec (V98) | 9 | 2 | 1 | - | 12 |
| Lacandon (V99) | 6 | 5 | 10 | - | 21 |
| Lagunero (W01) | 3 | - | - | - | 3 |
| Maya (W02) | 28,541 | 1,518 | 11,008 | 999 | 42,066 |
| Mazahua (W03) | 23 | 10 | 27 | 5 | 65 |
| Mazatec (W04) | 39 | 2 | 3 | 3 | 47 |
| Mexican American Indian (V84) | 54,900 | 710 | 22,737 | 410 | 78,757 |
| Mixe (W05) | 88 | 4 | 55 | 6 | 153 |
| Mixtec (W06) | 5,487 | 113 | 1,039 | 61 | 6,700 |
| Nahuatl (W07) | 480 | 94 | 306 | 60 | 940 |
| Olmec (W08) | 110 | 16 | 47 | 19 | 192 |
| Opata (W09) | 23 | 33 | 24 | 19 | 99 |
| Otomi (W10) | 381 | 62 | 247 | 78 | 768 |
| Popoloca (W11) | 4 | 8 | 4 | 2 | 18 |
| Seri (W12) | 15 | 1 | 30 | 3 | 49 |
| Tarahumara (Raramuri) (W13) | 684 | 111 | 520 | 84 | 1,399 |
| Tarasco (Purépecha) (W14) | 2,397 | 152 | 1,131 | 120 | 3,800 |
| Tepehua (W15) | 72 | 5 | 34 | 5 | 116 |
| Tequistlatec (W16) | 1 | - | 3 | - | 4 |
| Tlapanec (W17) | 22 | - | 11 | - | 33 |
| Topolabal (W18) | 6 | 1 | 2 | - | 9 |
| Toittec (W19) | 111 | 46 | 94 | 26 | 277 |
| Triqui (Trique) (W20) | 1,008 | 12 | 93 | - | 1,113 |
| Tzeltal (W21) | 8 | 6 | 12 | 1 | 27 |
| Tzotzil (W22) | 45 | 3 | 1 | 2 | 51 |
| Yucatan (W23) | 269 | 48 | 125 | 19 | 461 |
| Zacateco (W24) | 221 | 8 | 145 | 9 | 383 |
| Zapotec (W25) | 2,522 | 97 | 659 | 51 | 3,329 |
| Zoque (W26) | 3 | 6 | 5 | - | 14 |
| Mexican American Indians, not elsewhere classified (W27) | 596 | 66 | 457 | 53 | 1,172 |
| Miami tribal grouping (F17-F23) | 3,975 | 114 | 2,789 | 249 | 7,127 |
| Illinois Miami (F17) | 107 | 6 | 126 | 17 | 256 |
| Indiana Miami (F18) | 346 | 7 | 183 | 2 | 538 |
| Miami (F19) | 2,523 | 108 | 2,126 | 226 | 4,983 |
| Miami Tribe of Oklahoma (F20) | 992 | 7 | 354 | 4 | 1,357 |
| Miccosukee Tribe of Indians of Florida tribal grouping (F24-F26) | 119 | 17 | 78 | 36 | 250 |
| Micmac tribal grouping (F27-F30) | 3,276 | 215 | 4,714 | 525 | 8,730 |
| Aroostook Band of Micmac Indians (F27) | 107 | 5 | 29 | 1 | 142 |
| Micmac (F28) | 3,164 | 220 | 4,684 | 526 | 8,594 |
| Mission Indians tribal grouping (F31-F33) | 462 | 95 | 348 | 54 | 959 |
| Mission Indians (F31) | 413 | 95 | 328 | 54 | 890 |
| Cahuilla Band of Mission Indians (F32) | 49 | - | 20 | - | 69 |
| Miwok/Me-Wuk tribal grouping (F34-F41) | 3,469 | 468 | 2,465 | 297 | 6,699 |
| Ione Band of Miwok Indians (F34) | 184 | - | 116 | - | 300 |
| Shingle Springs Band of Miwok Indians (F35) | 98 | 3 | 55 | 1 | 157 |
| Miwok/Me-Wuk (F36) | 3,101 | 469 | 2,252 | 296 | 6,118 |
| Jackson Rancheria of Me-Wuk Indians of California (F37) | 5 | - | 16 | 2 | 23 |

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|--|---|---|---|---|--|
| | One tribe/tribal grouping reported | Two or more tribes/tribal groupings reported ¹ | One tribe/tribal grouping reported | Two or more tribes/tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Tuolumne Band of Me-Wuk Indians of California (F38) | 70 | 2 | 21 | 5 | 98 |
| Buena Vista Rancheria of Me-Wuk Indians of California (F39) | 4 | - | - | - | 4 |
| Chicken Ranch Rancheria of Me-Wuk Indians (F40) | 4 | - | - | 3 | 7 |
| Modoc tribal grouping (F42-F45) | 547 | 481 | 415 | 289 | 1,732 |
| Modoc (F42) | 464 | 481 | 406 | 289 | 1,640 |
| Modoc Tribe of Oklahoma (F43) | 83 | - | 9 | - | 92 |
| Mohegan Indian tribal grouping (F46-F47) | 1,358 | 64 | 1,158 | 184 | 2,764 |
| Monacan Indian Nation (F48) | 971 | 44 | 641 | 32 | 1,688 |
| Mono tribal grouping (F49-F52) | 2,250 | 383 | 782 | 149 | 3,564 |
| Mono (F49) | 1,213 | 389 | 637 | 151 | 2,390 |
| North Fork Rancheria of Mono Indians (F50) | 695 | 19 | 120 | 2 | 836 |
| Cold Springs Rancheria of Mono Indians (F51) | 135 | 5 | 5 | - | 145 |
| Big Sandy Band of Western Mono Indians (F52) | 191 | 2 | 18 | - | 211 |
| Nanticoke tribal grouping (F53-F55) | 888 | 40 | 1,057 | 81 | 2,066 |
| Nanticoke Lenini-Lenape (F56) | 756 | 2 | 307 | 4 | 1,069 |
| Narragansett Indian tribal grouping (F57-F61) | 2,093 | 119 | 2,733 | 248 | 5,193 |
| Navajo Nation tribal grouping (F62-F70) | 286,731 | 8,285 | 32,918 | 4,195 | 332,129 |
| Nez Perce Tribe of Idaho (Nimilipuu) tribal grouping (F71-F74) | 3,735 | 279 | 2,397 | 294 | 6,705 |
| Nipmuc tribal grouping (F75-F76, D27) | 595 | 30 | 1,118 | 86 | 1,829 |
| Hassanamisic Band of the Nipmuc Nation (F75) | 10 | - | 4 | 3 | 17 |
| Chaubunagungamaug Nipmuck (F76) | 5 | 2 | 6 | - | 13 |
| Nipmuc (D27) | 579 | 30 | 1,106 | 87 | 1,802 |
| Nomlaki tribal grouping (F77-F79) | 337 | 95 | 165 | 23 | 620 |
| Nomlaki (F77) | 258 | 94 | 110 | 24 | 486 |
| Paskenta Band of Nomlaki Indians (F78) | 79 | 1 | 54 | 1 | 135 |
| Northwest Tribes tribal grouping (F80-F94) | 139 | 62 | 209 | 47 | 457 |
| Atsea (F80) | 1 | 4 | 2 | - | 7 |
| Cello (F81) | 2 | 1 | 3 | 3 | 9 |
| Columbia (F82) | 35 | 5 | 91 | 3 | 134 |
| Kalapuya (F83) | 44 | 13 | 52 | 7 | 116 |
| Molalla (F84) | 17 | 3 | 21 | 10 | 51 |
| Talakamish (F85) | - | - | - | 4 | 4 |
| Terino (F86) | 8 | 1 | 6 | - | 15 |
| Tillamook (F87) | 19 | 29 | 24 | 18 | 90 |
| Wenatchee (F88) | 12 | 8 | 10 | 2 | 32 |
| Omaha Tribe of Nebraska tribal grouping (F95-F98) | 4,636 | 228 | 1,126 | 141 | 6,131 |
| Oneida Tribe of Indians of Wisconsin (F99) | 5,996 | 60 | 1,261 | 8 | 7,325 |
| Oregon Athabascan tribal grouping (G01-G03) | 71 | 21 | 108 | 25 | 225 |
| Osage Tribe, Oklahoma tribal grouping (G04-G09) | 8,938 | 1,125 | 7,090 | 1,423 | 18,576 |
| Otoe-Missouria Tribe of Indians tribal grouping (G10-G13) | 1,795 | 248 | 785 | 175 | 3,003 |
| Ottawa tribal grouping (G14-G22) | 7,272 | 776 | 4,274 | 711 | 13,033 |
| Little River Band of Ottawa Indians of Michigan (G15) | 1,727 | 16 | 754 | 11 | 2,508 |
| Ottawa Tribe of Oklahoma (G16) | 100 | - | 40 | 1 | 141 |
| Ottawa (G17) | 3,608 | 770 | 2,780 | 712 | 7,870 |
| Little Traverse Bay Bands of Odawa Indians (G18) | 1,657 | 10 | 572 | 5 | 2,244 |
| Grand River Band of Ottawa Indians (G19) | 168 | 4 | 119 | 1 | 292 |
| Paiute tribal grouping (G23-G49) | 9,340 | 865 | 3,135 | 427 | 13,767 |
| Big Pine Paiute Tribe of the Owens Valley (G23) | 44 | - | 13 | - | 57 |
| Bridgeport Paiute Indian Colony (G24) | 38 | - | 14 | - | 52 |
| Burns Paiute Tribe (G25) | 106 | - | 28 | - | 134 |
| Cedarville Rancheria (G26) | 4 | - | 2 | - | 6 |
| Fort Bidwell Indian Community (G27) | 68 | 2 | 8 | - | 78 |
| Fort Independence Indian Community (G28) | 27 | - | 18 | 1 | 46 |
| Kaibab Band of Paiute Indians of the Kaibab Indian Reservation (G29) | 239 | - | 33 | - | 272 |
| Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony (G30) | 95 | 1 | 9 | - | 105 |
| Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada (G32) | 67 | - | 32 | - | 99 |
| Malheur Paiute (G33) | 2 | 1 | 1 | 1 | 5 |
| Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada (G34) | 213 | 6 | 18 | 1 | 238 |
| Northern Paiute (G35) | 243 | 15 | 67 | 10 | 335 |
| Paiute (G37) | 4,702 | 806 | 2,298 | 411 | 8,217 |
| Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada (G38) | 1,390 | 17 | 125 | 3 | 1,535 |
| San Juan Southern Paiute Tribe of Arizona (G39) | 36 | 2 | - | - | 38 |
| Paiute Indian Tribe of Utah (Southern Paiute) (G40) | 339 | 14 | 92 | - | 445 |
| Summit Lake Paiute Tribe of Nevada (G41) | 57 | - | 8 | - | 65 |
| Utu Utu Gwattu Paiute Tribe of the Benton Paiute Reservation, California (G42) | 70 | 1 | 12 | - | 83 |
| Walker River Paiute Tribe of the Walker River Reservation, Nevada (G43) | 1,027 | 7 | 252 | 2 | 1,288 |
| Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada (G44) | 424 | 5 | 73 | - | 502 |
| Yahookin Band of Snake (G45) | 1 | 22 | 7 | 1 | 31 |
| Susanville Indian Rancheria, California (G47) | 112 | 17 | 19 | 2 | 150 |
| Winnemucca Indian Colony of Nevada (G48) | 7 | 9 | 3 | 1 | 20 |
| Pamunkey Indian tribal grouping (G50-G52) | 315 | 41 | 526 | 120 | 1,002 |
| Passamaquoddy tribal grouping (G53-G60) | 2,615 | 54 | 1,436 | 133 | 4,238 |
| Indian Township (G53) | 2 | 1 | - | - | 3 |
| Passamaquoddy Tribe of Maine (G54) | 2,583 | 55 | 1,435 | 133 | 4,206 |
| Pleasant Point Passamaquoddy (G55) | 29 | - | 1 | - | 30 |
| Pawnee tribal grouping (G61-G67) | 2,484 | 392 | 1,634 | 368 | 4,878 |
| Pawnee Nation of Oklahoma (G61) | 39 | 2 | 22 | - | 63 |
| Pawnee (G62) | 2,445 | 390 | 1,612 | 368 | 4,815 |
| Penobscot Tribe of Maine tribal grouping (G68-G71) | 2,095 | 52 | 1,985 | 146 | 4,278 |
| Peoria tribal grouping (G72-G76) | 1,314 | 61 | 778 | 68 | 2,221 |
| Peoria Tribe of Indians of Oklahoma (G72) | 300 | - | 134 | 1 | 435 |
| Peoria (G73) | 1,014 | 61 | 644 | 67 | 1,786 |
| Pequot tribal grouping (G77-G83) | 1,087 | 108 | 1,587 | 258 | 3,040 |
| Mashantucket Pequot Tribe of Connecticut (G77) | 471 | 19 | 396 | 15 | 901 |
| Pequot (G78) | 370 | 116 | 820 | 244 | 1,550 |
| Paucatuck Eastern Pequot (G79) | 11 | - | 6 | 2 | 19 |
| Eastern Pequot (G80) | 218 | 7 | 361 | 5 | 591 |
| Pima tribal grouping (G84-G91) | 22,040 | 1,165 | 3,116 | 334 | 26,655 |
| Cila River Indian Community of the Cila River Indian Reservation (G84) | 12,139 | 86 | 984 | 24 | 13,233 |
| Pima (G85) | 4,818 | 924 | 1,696 | 289 | 7,727 |
| Salt River Pima-Maricopa Indian Community (G86) | 5,057 | 199 | 430 | 24 | 5,710 |
| Peeposh (G87) | 4 | - | 5 | - | 9 |
| Piscataway tribal grouping (G92-G95) | 893 | 26 | 851 | 69 | 1,839 |

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|--|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Pit River tribal grouping (G96-G98) | 1,840 | 237 | 736 | 126 | 2,939 |
| Pit River Tribe of California (G96) | 1,835 | 237 | 730 | 126 | 2,928 |
| Alturas Indian Rancheria (G97) | 5 | - | 6 | - | 11 |
| Pomo tribal grouping (G99-H14, H66-H69, H93-H98) | 6,520 | 538 | 2,921 | 329 | 10,308 |
| Big Valley Band of Pomo Indians of the Big Valley Rancheria (G99) | 212 | 5 | 57 | - | 274 |
| Central Pomo (H01) | 44 | 15 | 24 | - | 83 |
| Dry Creek Rancheria of Pomo Indians (H02) | 390 | 3 | 137 | - | 530 |
| Eastern Pomo (H03) | 2 | - | - | - | 2 |
| Kashia Band of Pomo Indians of the Stewarts Point Rancheria (H04) | 357 | 6 | 101 | 13 | 477 |
| Northern Pomo (H05) | 18 | 13 | 8 | 15 | 54 |
| Pomo (H06) | 3,053 | 509 | 1,696 | 295 | 5,553 |
| Scotts Valley Band of Pomo Indians of California (H07) | 79 | 7 | 15 | - | 101 |
| Stonyford (H08) | - | - | - | - | - |
| Elem Indian Colony of the Sulphur Bank Rancheria (H09) | 82 | 3 | 37 | 1 | 123 |
| Sherwood Valley Rancheria of Pomo Indians of California (H10) | 339 | 2 | 91 | 2 | 434 |
| Guidville Rancheria of California (H11) | 60 | 10 | 21 | - | 91 |
| Lytton Rancheria of California (H12) | 78 | 2 | 32 | 1 | 113 |
| Cloverdale Rancheria of Pomo Indians of California (H13) | 146 | 6 | 37 | 8 | 197 |
| Coyote Valley Band of Pomo Indians of California (H14) | 145 | 7 | 25 | 5 | 182 |
| Hopland Band of Pomo Indians (H66) | 287 | 1 | 66 | 3 | 357 |
| Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria (H67) | 268 | 10 | 122 | 4 | 404 |
| Middletown Rancheria of Pomo Indians (H68) | 33 | 5 | 20 | - | 58 |
| Pinoleville Pomo Nation (H69) | 103 | - | 33 | 1 | 137 |
| Potter Valley Tribe (H93) | 6 | 5 | 7 | 4 | 22 |
| Redwood Valley Rancheria of Pomo Indians (H94) | 76 | - | 15 | - | 91 |
| Robinson Rancheria of Pomo Indians (H95) | 185 | 7 | 31 | 2 | 225 |
| Habematolel Pomo of Upper Lake (Upper Lake Band of Pomo Indians of Upper Lake Rancheria) (H96) | 61 | 1 | 34 | - | 96 |
| Federated Indians of Graton Rancheria (H97) | 416 | 26 | 287 | 12 | 741 |
| Lower Lake Rancheria Koi Nation (H98) | 30 | 4 | 7 | - | 41 |
| Ponca tribal grouping (H16-H20) | 3,887 | 363 | 1,547 | 225 | 6,022 |
| Ponca Tribe of Nebraska (H15) | 791 | 12 | 337 | 5 | 1,145 |
| Ponca Tribe of Indians of Oklahoma (H16) | 204 | 2 | 36 | - | 242 |
| Ponca (H17) | 2,891 | 351 | 1,174 | 220 | 4,636 |
| Potawatomi tribal grouping (H21-H33) | 20,412 | 462 | 12,249 | 648 | 33,771 |
| Citizen Potawatomi Nation, Oklahoma (H21) | 3,203 | 11 | 1,247 | 7 | 4,468 |
| Forest County Potawatomi Community, Wisconsin (H22) | 502 | 3 | 45 | 1 | 551 |
| Hannahville Potawatomi Indian Tribe, Michigan (H23) | 405 | 5 | 59 | 1 | 470 |
| Nottawasippi Huron Band of the Potawatomi, Michigan (H24) | 406 | 5 | 235 | 6 | 652 |
| Pokagon Band of Potawatomi Indians (H25) | 1,227 | 17 | 541 | 8 | 1,793 |
| Potawatomi (H26) | 12,844 | 464 | 9,576 | 631 | 23,515 |
| Prairie Band of Potawatomi Nation, Kansas (H27) | 1,585 | 17 | 469 | 12 | 2,083 |
| Wisconsin Potawatomi (H28) | 2 | - | - | - | 2 |
| Match-e-be-nash-she-wish Band of Potawatomi Indians (H29) | 208 | - | 68 | - | 276 |
| Powhatan tribal grouping (H34-H37) | 458 | 81 | 1,335 | 312 | 2,186 |
| Pueblo tribal grouping (H38, H40, H42-H65) | 49,695 | 2,331 | 9,568 | 946 | 62,540 |
| Pueblo of Acoma (H38) | 4,349 | 397 | 527 | 75 | 5,348 |
| Pueblo of Cochiti (H40) | 1,025 | 73 | 128 | 11 | 1,237 |
| Pueblo of Isleta (H42) | 4,089 | 273 | 798 | 61 | 5,221 |
| Pueblo of Jemez (H43) | 2,607 | 167 | 240 | 20 | 3,034 |
| Pueblo of Laguna (H45) | 6,758 | 518 | 949 | 133 | 8,358 |
| Pueblo of Nambe (H46) | 568 | 20 | 121 | 14 | 723 |
| Pueblo of Picuris (H47) | 267 | 34 | 102 | 36 | 439 |
| Piro Manso Tewa Tribe (H48) | 310 | 14 | 138 | 2 | 464 |
| Pueblo of Pojoaque (H49) | 266 | 4 | 55 | 4 | 329 |
| Pueblo (H50) | 2,932 | 662 | 2,661 | 474 | 6,729 |
| Pueblo of San Felipe (H51) | 2,375 | 108 | 126 | 2 | 2,611 |
| Pueblo of San Ildefonso (H52) | 420 | 11 | 31 | 2 | 464 |
| Ohkay Owingeh, New Mexico (San Juan Pueblo) (H53) | 1,522 | 43 | 196 | 9 | 1,770 |
| San Juan (H55) | 240 | 32 | 65 | 6 | 343 |
| Pueblo of Sandia (H56) | 427 | 28 | 69 | 8 | 532 |
| Pueblo of Santa Ana (H57) | 679 | 16 | 72 | 8 | 775 |
| Pueblo of Santa Clara (H58) | 1,182 | 38 | 195 | 10 | 1,425 |
| Pueblo of Santo Domingo (H59) | 3,519 | 108 | 778 | 25 | 4,430 |
| Pueblo of Taos (H60) | 1,986 | 148 | 518 | 49 | 2,701 |
| Pueblo of Tesuque (H61) | 409 | 17 | 32 | 3 | 461 |
| Ysleta Del Sur Pueblo of Texas (H63) | 2,183 | 58 | 586 | 81 | 2,908 |
| Pueblo of Zia (H64) | 999 | 48 | 125 | 17 | 1,189 |
| Zuni Tribe of the Zuni Reservation (H65) | 9,946 | 801 | 931 | 150 | 11,828 |
| Puget Sound Salish tribal grouping (H70-H92) | 14,320 | 215 | 5,540 | 185 | 20,260 |
| Marietta Band of Nooksack (H70) | - | - | - | - | - |
| Duwamish (H71) | 172 | 17 | 184 | 4 | 377 |
| Kikiallus (H72) | 5 | - | 8 | - | 13 |
| Lower Skagit (H73) | - | - | - | 2 | 2 |
| Muckleshoot Indian Tribe (H74) | 1,872 | 18 | 313 | 12 | 2,215 |
| Nisqually Indian Tribe (H75) | 551 | 18 | 237 | 39 | 845 |
| Nooksack Indian Tribe (H76) | 856 | 29 | 563 | 25 | 1,473 |
| Puget Sound Salish (H78) | 29 | 3 | 38 | 5 | 75 |
| Puyallup Tribe (H79) | 2,543 | 57 | 841 | 27 | 3,468 |
| Samish Indian Tribe (H80) | 459 | 4 | 462 | 5 | 930 |
| Sauk-Suiattle Indian Tribe (H81) | 83 | - | 45 | 3 | 131 |
| Skokomish Indian Tribe of the Skokomish Indian Reservation, Washington (H82) | 655 | 14 | 200 | 8 | 877 |
| Skokomish (H83) | 4 | - | 1 | 2 | 7 |
| Snohomish (H84) | 497 | 17 | 421 | 14 | 949 |
| Snoqualmie Tribe (H85) | 361 | 10 | 322 | 8 | 701 |
| Squaxin Island Tribe of the Squaxin Island Reservation, Washington (H86) | 699 | 8 | 260 | 7 | 974 |
| Stellacoom (H87) | 88 | 5 | 124 | 8 | 225 |
| Stillaguamish (H88) | 146 | 1 | 74 | 2 | 223 |
| The Suquamish Tribe (H89) | 736 | 10 | 275 | 12 | 1,033 |
| Swinomish Indian Tribal Community (H90) | 806 | 13 | 157 | 12 | 988 |
| Tulalip Tribes (H91) | 3,044 | 26 | 700 | 21 | 3,791 |
| Upper Skagit Indian Tribe (H92) | 689 | 15 | 297 | 7 | 1,008 |
| Quapaw Tribe of Indians, Oklahoma tribal grouping (H99-H99) | 1,781 | 281 | 988 | 277 | 3,327 |
| Quinault tribal grouping (J01-J04) | 2,354 | 88 | 892 | 68 | 3,402 |

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|---|---|---|---|---|--|
| | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Rappahannock Indian tribal grouping (J05-J06) | 272 | 10 | 183 | 16 | 481 |
| Reno-Sparks Indian Colony, Nevada tribal grouping (J07-J13) | 587 | 13 | 21 | 2 | 623 |
| Round Valley Indian Tribes tribal grouping (J14-J18) | 804 | 108 | 176 | 36 | 1,124 |
| Sac and Fox tribal grouping (J19-J27) | 4,781 | 375 | 2,187 | 354 | 7,697 |
| Sac and Fox Tribe of the Mississippi in Iowa (J19) | 1,586 | 180 | 792 | 169 | 2,727 |
| Sac and Fox Nation of Missouri in Kansas and Nebraska (J20) | 88 | 6 | 32 | 2 | 128 |
| Sac and Fox Nation, Oklahoma (J21) | 469 | 17 | 95 | 1 | 582 |
| Sac and Fox (J22) | 2,624 | 200 | 1,263 | 192 | 4,279 |
| Salinan tribal grouping (J28-J30) | 467 | 31 | 386 | 21 | 905 |
| Salish tribal grouping (J31-J34) | 1,754 | 155 | 741 | 81 | 2,731 |
| Confederated Salish and Kootenai Tribes of the Flathead Nation tribal grouping (J35-J37) | 5,099 | 182 | 2,298 | 94 | 7,673 |
| Saponi (J38) | 658 | 51 | 1,026 | 114 | 1,849 |
| Schaghticoke tribal grouping (J39-J46) | 247 | 5 | 288 | 31 | 571 |
| Seminole tribal grouping (J47-J57) | 14,080 | 2,368 | 12,447 | 3,076 | 31,971 |
| Big Cypress Reservation (J47) | 1 | - | - | - | 1 |
| Brighton Reservation (J48) | 1 | - | - | - | 1 |
| Seminole Tribe of Florida (J49) | 795 | 6 | 193 | 11 | 1,005 |
| Hollywood Reservation (Dania) (J50) | 4 | - | 14 | 3 | 21 |
| Seminole Nation of Oklahoma (J51) | 911 | 31 | 185 | 15 | 1,142 |
| Seminole (J52) | 12,365 | 2,337 | 12,050 | 3,055 | 29,807 |
| Tampa Reservation (J54) | - | - | 1 | - | 1 |
| Serrano tribal grouping (J58-J61) | 324 | 71 | 101 | 18 | 514 |
| San Manuel Band of Serrano Mission Indians (J58) | 177 | 2 | 19 | - | 198 |
| Serrano (J59) | 146 | 71 | 82 | 18 | 317 |
| Shasta tribal grouping (J62-J65) | 653 | 121 | 637 | 95 | 1,506 |
| Shasta (J62) | 526 | 108 | 621 | 96 | 1,351 |
| Quartz Valley Indian Reservation (J63) | 126 | 15 | 15 | 1 | 157 |
| Shawnee tribal grouping (J66-J73) | 7,298 | 478 | 6,396 | 602 | 14,774 |
| Absentee Shawnee Tribe of Indians of Oklahoma (J66) | 1,947 | 16 | 397 | 7 | 2,367 |
| Eastern Shawnee (J67) | 1,183 | 29 | 531 | 6 | 1,749 |
| Shawnee (J68) | 3,168 | 395 | 4,516 | 544 | 8,623 |
| Piqua Shawnee Tribe (J69) | 161 | 1 | 82 | 6 | 250 |
| Shawnee Tribe, Oklahoma (J70) | 785 | 40 | 846 | 41 | 1,712 |
| Shawnee Nation United Remnant Band (J71) | 39 | 1 | 21 | - | 61 |
| East of the River Shawnee (J72) | 13 | - | 2 | - | 15 |
| Shinnecock Indian Nation tribal grouping (J74-J77) | 1,331 | 78 | 1,965 | 174 | 3,548 |
| Shoalwater Bay Tribe of the Shoalwater Bay Reservation, Washington tribal grouping (J78-J80) | 147 | 2 | 63 | 3 | 215 |
| Shoshone tribal grouping (J81-J92) | 7,852 | 610 | 3,969 | 571 | 13,002 |
| Duckwater Shoshone Tribe (J81) | 151 | 1 | 20 | - | 172 |
| Ely Shoshone Tribe (J82) | 216 | 1 | 51 | - | 268 |
| Confederated Tribes of the Goshute Reservation (J83) | 350 | 23 | 62 | 4 | 439 |
| Shoshone (J85) | 4,105 | 562 | 3,441 | 559 | 8,667 |
| Skull Valley Band of Goshute Indians of Utah (J86) | 49 | 3 | 2 | - | 54 |
| Death Valley Timbi-Sha Shoshone (J88) | 169 | 5 | 71 | 1 | 246 |
| Northwestern Band of Shoshone Nation of Utah (Washakie) (J89) | 141 | 13 | 90 | 4 | 248 |
| Eastern Shoshone (Wind River) (J90) | 2,604 | 12 | 219 | 5 | 2,840 |
| Yomba Shoshone Tribe of the Yomba Reservation, Nevada (J91) | 62 | - | 12 | - | 74 |
| Te-Moak Tribes of Western Shoshone Indians of Nevada tribal grouping (J93-J99) | 1,257 | 9 | 220 | 13 | 1,499 |
| Te-Moak Tribes of Western Shoshone Indians of Nevada (J93) | 1,234 | 7 | 213 | 10 | 1,464 |
| Battle Mountain Band (J94) | 9 | - | 5 | - | 14 |
| Elko Band (J95) | 13 | 2 | - | 3 | 18 |
| South Fork Band (J96) | - | - | - | - | - |
| Wells Band (J97) | 1 | - | 2 | - | 3 |
| Paiute-Shoshone tribal grouping (K01-K09) | 3,673 | 63 | 620 | 23 | 4,379 |
| Shoshone-Paiute Tribes of the Duck Valley Reservation (K01) | 1,160 | 5 | 24 | 2 | 1,191 |
| Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada (K02) | 590 | 6 | 90 | 2 | 688 |
| Fort McDermitt Paiute and Shoshone Tribes of Nevada and Oregon (K03) | 427 | 3 | 34 | - | 464 |
| Shoshone Paiute (K04) | 1,168 | 44 | 389 | 16 | 1,617 |
| Bishop Paiute Tribe (K05) | 223 | 6 | 61 | 3 | 293 |
| Lone Pine (K06) | 103 | 3 | 22 | - | 128 |
| Confederated Tribes of Siletz Indians of Oregon tribal grouping (K10-K15) | 2,757 | 21 | 1,107 | 27 | 3,912 |
| Sioux tribal grouping (K16-K21, K23-K65) | 112,176 | 4,301 | 46,964 | 6,669 | 170,110 |
| Brule Sioux (K17) | 41 | 10 | 28 | 8 | 87 |
| Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota (K18) | 8,936 | 1,785 | 2,860 | 355 | 13,936 |
| Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota (K19) | 2,369 | 62 | 364 | 20 | 2,815 |
| Dakota Sioux (K20) | 1,062 | 204 | 933 | 203 | 2,402 |
| Flandreau Santee Sioux Tribe of South Dakota (K21) | 285 | 3 | 97 | - | 385 |
| Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota (K24) | 1,832 | 19 | 419 | 4 | 2,274 |
| Lower Sioux Indian Community in the State of Minnesota (K25) | 624 | 5 | 168 | 2 | 799 |
| Mdewakanton Sioux (K26) | 412 | 32 | 339 | 26 | 809 |
| Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota (K28) | 24,908 | 367 | 4,494 | 243 | 30,012 |
| Pipestone Sioux (K30) | 1 | - | 2 | - | 3 |
| Prairie Island Indian Community (K31) | 394 | 5 | 93 | 4 | 496 |
| Shakopee Mdewakanton Sioux Community (Prior Lake) (K32) | 113 | 6 | 171 | 2 | 292 |
| Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota (K33) | 16,610 | 117 | 2,421 | 58 | 19,206 |
| Santee Sioux Nation, Nebraska (K35) | 2,346 | 99 | 932 | 39 | 3,416 |
| Sioux (K36) | 17,575 | 5,115 | 21,723 | 5,348 | 49,761 |
| Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota (K37) | 5,850 | 69 | 1,258 | 25 | 7,202 |
| Spirit Lake Tribe (K39) | 4,562 | 14 | 343 | 3 | 4,922 |
| Standing Rock Sioux Tribe (K40) | 9,089 | 102 | 1,171 | 19 | 10,381 |
| Teton Sioux (K41) | 7,230 | 783 | 7,530 | 968 | 16,511 |
| Upper Sioux Community (K43) | 142 | - | 64 | - | 206 |
| Wahpekute Sioux (K44) | 1 | 1 | - | 4 | 6 |
| Wazhazha Sioux (K46) | 11 | 3 | 2 | - | 16 |
| Yankton Sioux Tribe of South Dakota (K47) | 5,490 | 76 | 1,207 | 23 | 6,796 |
| Yanktonai Sioux (K48) | 12 | - | 6 | 1 | 19 |
| Siouxlaw tribal grouping (K54-K58) | 32 | 30 | 26 | 11 | 99 |
| South American Indian tribal grouping (W67-X24) | 20,901 | 479 | 25,015 | 838 | 47,233 |
| South American Indian (W67) | 4,020 | 94 | 3,821 | 76 | 8,011 |
| Ache Indian (W68) | 18 | 11 | 3 | 6 | 38 |
| Amazon Indian (W69) | 90 | 3 | 113 | 12 | 218 |
| Andean Indian (W70) | 33 | 2 | 74 | 1 | 110 |
| Mapuche (Araucanian) (W71) | 149 | 10 | 221 | 18 | 398 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|---|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Arawak (W72) | 285 | 147 | 793 | 312 | 1,537 |
| Aymara (W73) | 241 | 40 | 185 | 17 | 483 |
| Canela (W74) | 406 | 4 | 269 | 7 | 686 |
| Guarani (W75) | 284 | 16 | 310 | 39 | 649 |
| Inca (W76) | 3,737 | 260 | 2,913 | 250 | 7,160 |
| Maya South American (W77) | 16 | 15 | 16 | 8 | 55 |
| Quechua (W78) | 602 | 77 | 552 | 42 | 1,273 |
| Quichua (W79) | 43 | 16 | 36 | 10 | 105 |
| Taino (W80) | 8,671 | 322 | 13,238 | 733 | 22,964 |
| Tehueltche (W81) | - | 3 | 1 | 5 | 9 |
| Tupi (W82) | 11 | 6 | 31 | 34 | 82 |
| Zaporo (W83) | 1 | - | - | - | 1 |
| Argentinean Indian (W84) | 16 | 2 | 24 | - | 42 |
| Bolivian Indian (W85) | 73 | 2 | 17 | 2 | 94 |
| Brazilian Indian (W86) | 139 | 1 | 319 | 3 | 462 |
| Chilean Indian (W87) | 19 | 3 | 34 | 2 | 58 |
| Colombian Indian (W88) | 251 | 12 | 369 | 12 | 644 |
| Ecuadorian Indian (W89) | 432 | 17 | 230 | - | 679 |
| Guyanese South American Indian (W90) | 98 | 2 | 76 | 2 | 178 |
| Paraguayan Indian (W91) | 20 | - | 6 | - | 26 |
| Peruvian Indian (W92) | 681 | 19 | 527 | 19 | 1,246 |
| Uruguayan Indian (W94) | - | - | - | - | - |
| Venezuelan Indian (W95) | 29 | 1 | 82 | 1 | 113 |
| South American Indian, not elsewhere classified (W96) | 225 | 17 | 349 | 50 | 641 |
| Spanish American Indian tribal grouping (X25-Z99) | 13,460 | 298 | 6,012 | 181 | 19,951 |
| Spanish American Indian (X25) | 13,460 | 298 | 6,012 | 181 | 19,951 |
| Spokane tribal grouping (K59-K66) | 2,461 | 51 | 676 | 36 | 3,224 |
| Stockbridge-Munsee Community tribal grouping (K67-K76) | 2,149 | 86 | 1,622 | 257 | 4,114 |
| Ak-Chin Indian Community of the Maricopa Indian Reservation (K77) | 676 | 11 | 199 | 4 | 890 |
| Tohono O'Odham tribal grouping (K78-K86) | 19,522 | 725 | 3,033 | 198 | 23,478 |
| Gila Bend (K78) | 61 | 1 | 23 | - | 85 |
| San Xavier (K79) | 2 | 2 | 4 | - | 8 |
| Sells (K80) | 3 | 3 | 5 | 1 | 12 |
| Tohono O'Odham Nation of Arizona (K81) | 19,453 | 725 | 3,001 | 197 | 23,376 |
| Tolowa tribal grouping (K87-K89, A91) | 884 | 42 | 423 | 24 | 1,373 |
| Tolowa (K87) | 523 | 43 | 320 | 24 | 910 |
| Big Lagoon Rancheria (K88) | 27 | 4 | 5 | - | 27 |
| Elk Valley Rancheria (K89) | 37 | 4 | 13 | - | 54 |
| Smith River Rancheria (A91) | 298 | 3 | 83 | 2 | 387 |
| Tonkawa Tribe of Indians of Oklahoma tribal grouping (K90-K93) | 469 | 31 | 101 | 14 | 615 |
| Tygh (K94) | 3 | - | 7 | - | 10 |
| Confederated Tribes of the Umatilla Indian Reservation tribal grouping (K97-K99) | 1,780 | 216 | 567 | 94 | 2,657 |
| Umpqua tribal grouping (L01-L05) | 863 | 35 | 370 | 28 | 1,296 |
| Cow Creek Band of Umpqua Indians of Oregon (L01) | 657 | 6 | 251 | 10 | 924 |
| Umpqua (L02) | 205 | 31 | 117 | 22 | 375 |
| Ute tribal grouping (L06-L14) | 7,435 | 785 | 2,802 | 469 | 11,491 |
| Ute Indian Tribe of the Uintah and Ouray Reservation, Utah (L07) | 1,630 | 52 | 220 | 20 | 1,922 |
| Ute Mountain Ute Tribe (L08) | 1,359 | 37 | 76 | 6 | 1,478 |
| Ute (L09) | 3,245 | 684 | 2,169 | 441 | 6,539 |
| Southern Ute Indian Tribe of the Southern Ute Reservation (L10) | 1,186 | 42 | 332 | 12 | 1,572 |
| Wailaki tribal grouping (L15-L18) | 827 | 272 | 515 | 95 | 1,709 |
| Walla Walla tribal grouping (L19-L21) | 134 | 120 | 82 | 47 | 383 |
| Wampanoag tribal grouping (L22-L32) | 2,756 | 83 | 3,469 | 192 | 6,500 |
| Wampanoag Tribe of Gay Head (Aquinnah) (L22) | 110 | 2 | 71 | 4 | 187 |
| Mashpee Wampanoag Tribe (L23) | 708 | 11 | 323 | 15 | 1,057 |
| Wampanoag (L24) | 1,652 | 66 | 2,645 | 168 | 4,531 |
| Seaconeek Wampanoag (L25) | 59 | 1 | 89 | - | 149 |
| Pocasset Wampanoag (L26) | 15 | - | 47 | 5 | 67 |
| Herring Pond Wampanoag Tribe (L27) | 35 | - | 40 | - | 75 |
| Pokanoket (Royal House of Pokanoket) (L28) | 85 | 7 | 112 | 2 | 206 |
| Ponkapoag (L29) | 24 | - | 54 | 7 | 85 |
| Chappaquiddick Tribe of the Wampanoag Indian Nation (L30) | 64 | 2 | 79 | 9 | 154 |
| Assonet Band of the Wampanoag Nation (L31) | 1 | - | - | - | 1 |
| Confederated Tribes of Warm Springs (L33) | 3,586 | 265 | 428 | 47 | 4,326 |
| Wascomup tribal grouping (L34-L37) | 162 | 179 | 63 | 36 | 440 |
| Washoe tribal grouping (L38-L46) | 1,312 | 279 | 394 | 73 | 2,058 |
| Alpine (L38) | 18 | 2 | 18 | 1 | 39 |
| Washoe Tribe of Nevada and California (L41) | 1,294 | 277 | 376 | 72 | 2,019 |
| Wichita and Affiliated Tribes, Oklahoma tribal grouping (L47-L51) | 1,637 | 120 | 558 | 61 | 2,376 |
| Wichita (L47) | 1,622 | 117 | 530 | 55 | 2,324 |
| Keechi (L48) | 1 | 4 | 6 | 5 | 16 |
| Waco (L49) | 5 | 2 | 16 | 1 | 24 |
| Tawakonie (L50) | 7 | 1 | 5 | 2 | 15 |
| Wind River tribal grouping (L52-L54) | 17 | 4 | 6 | 1 | 28 |
| Winnebago tribal grouping (L55-L65) | 3,551 | 193 | 1,286 | 163 | 5,193 |
| Winnebago Tribe of Nebraska (L56) | 302 | 6 | 116 | 5 | 429 |
| Winnebago (L57) | 3,249 | 187 | 1,170 | 158 | 4,764 |
| Wintun tribal grouping (L66-L70) | 2,098 | 269 | 1,332 | 167 | 3,866 |
| Wintun (L66) | 1,918 | 268 | 1,286 | 166 | 3,638 |
| Cachil Dehe Band of Wintun Indians of the Colusa Rancheria (L67) | 27 | 2 | 24 | 2 | 55 |
| Cortina Indian Rancheria of Wintun Indians (L68) | 124 | - | 18 | - | 142 |
| Rumsey Indian Rancheria of Wintun Indians (L69) | 24 | 10 | 3 | 1 | 38 |
| Grindstone Indian Rancheria of Wintun-Wailaki Indians (L71) | 88 | 2 | 13 | 2 | 105 |
| Wiyot tribal grouping (L72-L78) | 532 | 48 | 359 | 18 | 957 |
| Wiyot Tribe, California (L72) | 512 | 48 | 348 | 18 | 926 |
| Blue Lake Rancheria (L74) | 20 | - | 11 | - | 31 |
| Confederated Tribes and Bands of the Yakama Nation tribal grouping (L79-L84) | 8,786 | 310 | 2,207 | 224 | 11,527 |
| Yakama Cowitz tribal grouping (L85-L90) | 6 | - | 4 | 2 | 12 |
| Yaqui tribal grouping (L91-L99) | 21,679 | 1,516 | 8,183 | 1,217 | 32,595 |
| Pascua Yaqui Tribe of Arizona (L92) | 10,392 | 115 | 1,453 | 38 | 11,998 |
| Yaqui (L93) | 11,266 | 1,444 | 6,725 | 1,189 | 20,624 |
| Yavapai Apache Nation of the Camp Verde Indian Reservation tribal grouping (M01-M06) | 1,277 | 24 | 301 | 13 | 1,615 |
| Yokuts tribal grouping (M07-M15) | 4,212 | 461 | 1,430 | 170 | 6,273 |

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|---|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Picayune Rancheria of Chukchansi Indians (M07) | 1,156 | 201 | 531 | 77 | 1,965 |
| Tachi (M08) | 655 | 60 | 124 | 12 | 851 |
| Tule River Indian Tribe (M09) | 1,393 | 40 | 283 | 14 | 1,730 |
| Yokuts (M10) | 953 | 224 | 483 | 79 | 1,739 |
| Table Mountain Rancheria (M11) | 23 | - | 5 | - | 28 |
| Yuchi tribal grouping (M16-M21) | 227 | 160 | 147 | 89 | 623 |
| Yuchi (M16) | 218 | 158 | 138 | 88 | 602 |
| Tla (M17) | - | 2 | 1 | 1 | 4 |
| Tla Wilano (M18) | 1 | - | 2 | - | 3 |
| Ani-stohini/Uinami (M19) | 8 | - | 6 | - | 14 |
| Yuman tribal grouping (M22-M33) | 7,727 | 551 | 1,642 | 169 | 10,089 |
| Cocopan Tribe of Arizona (M22) | 810 | 32 | 162 | 5 | 1,009 |
| Havasupai Tribe of the Havasupai Reservation (M23) | 662 | 33 | 51 | 4 | 750 |
| Hualapai Indian Tribe of the Hualapai Indian Reservation (M24) | 1,677 | 71 | 200 | 17 | 1,965 |
| Mancopa (M25) | 196 | 185 | 68 | 31 | 480 |
| Fort Mojave Indian Tribe of Arizona, California, and Nevada (M26) | 1,257 | 165 | 381 | 69 | 1,872 |
| Quechan Tribe of the Fort Yuma Indian Reservation (M27) | 2,733 | 102 | 650 | 35 | 3,520 |
| Yavapai-Prescott Tribe of the Yavapai Reservation (M28) | 352 | 49 | 125 | 18 | 544 |
| Yurok tribal grouping (M34-M39) | 4,600 | 233 | 1,588 | 146 | 6,567 |
| Resighini Rancheria (M34) | 51 | 2 | 9 | 1 | 63 |
| Yurok Tribe (M35) | 4,549 | 231 | 1,579 | 145 | 6,504 |
| American Indian, not specified (M41-M43)¹ | 131,943 | 117 | 102,188 | 72 | 234,320 |
| Alaskan Athabascan tribal grouping (M52-N27) | 15,623 | 804 | 5,531 | 526 | 22,484 |
| Ahtna, Inc. Corporation (M52) | 295 | 32 | 121 | 14 | 462 |
| Alaskan Athabascan (M53) | 5,407 | 708 | 2,744 | 425 | 9,284 |
| Alatna Village (M54) | 50 | - | 9 | 2 | 61 |
| Alexander (M55) | 10 | - | 17 | 2 | 29 |
| Atlakaket Village (M56) | 183 | 2 | 10 | - | 195 |
| Alanvik (M57) | 1 | 1 | - | - | 2 |
| Anvik Village (M58) | 90 | - | 10 | 2 | 102 |
| Arctic Village (M59) | 14 | 1 | 1 | - | 16 |
| Beaver Village (M60) | 157 | 12 | 25 | 2 | 196 |
| Birch Creek Tribe (M61) | 35 | - | 8 | - | 43 |
| Native Village of Cantwell (M62) | 20 | 3 | 5 | - | 28 |
| Chalkyitsik Village (M63) | 54 | 4 | 3 | 1 | 62 |
| Chickaloon Native Village (M64) | 58 | 7 | 19 | - | 84 |
| Cheesh-Na Tribe (Chistochina) (M65) | 23 | 1 | 6 | - | 30 |
| Native Village of Chitina (M66) | 49 | 11 | 41 | 6 | 107 |
| Circle Native Community (M67) | 80 | - | 12 | - | 92 |
| Cook Inlet (M68) | 865 | 94 | 433 | 57 | 1,449 |
| Copper River (M70) | 5 | 2 | 1 | - | 8 |
| Village of Dot Lake (M71) | 44 | 1 | 10 | - | 55 |
| Doyon (M72) | 1,226 | 109 | 418 | 47 | 1,800 |
| Native Village of Eagle (M73) | 62 | 15 | 21 | 5 | 103 |
| Ekudna Native Village (M74) | 86 | 5 | 43 | 10 | 144 |
| Evansville Village (Bettes Field) (M75) | 16 | 5 | 4 | 2 | 27 |
| Native Village of Fort Yukon (M76) | 610 | 7 | 49 | 12 | 678 |
| Native Village of Gakona (M77) | 28 | - | 1 | - | 29 |
| Galena Village (Louden Village) (M78) | 334 | 11 | 24 | - | 369 |
| Organized Village of Grayling (Holikachuk) (M79) | 196 | 23 | 31 | 5 | 255 |
| Gulkana Village (M80) | 82 | - | 2 | - | 84 |
| Healy Lake Village (M81) | 14 | 3 | 3 | - | 20 |
| Holy Cross Village (M82) | 230 | 4 | 34 | 2 | 270 |
| Hughes Village (M83) | 81 | 4 | 4 | - | 89 |
| Huslia Village (M84) | 81 | 8 | 21 | 4 | 114 |
| Village of Iliamna (M85) | 48 | 2 | 9 | - | 59 |
| Village of Kaltag (M86) | 222 | 2 | 19 | - | 243 |
| Native Village of Kluti Kaah (Copper Center) (M87) | 135 | 11 | 20 | - | 166 |
| Knik Tribe (M88) | 88 | 8 | 43 | 9 | 148 |
| Koyukuk Native Village (M89) | 214 | 43 | 55 | 6 | 318 |
| Lake Minchumina (M90) | 5 | - | 2 | 1 | 8 |
| Lime Village (M91) | 16 | - | 4 | - | 20 |
| McGrath Native Village (M92) | 96 | 4 | 60 | 1 | 161 |
| Manley Village Council (Manley Hot Springs) (M93) | 14 | 1 | 7 | 1 | 23 |
| Mentasta Traditional Council (M94) | 86 | 5 | 16 | - | 107 |
| Native Village of Minto (M95) | 244 | 6 | 17 | 2 | 269 |
| Nenana Native Association (M96) | 201 | 9 | 54 | 5 | 269 |
| Nikolai Village (M97) | 53 | 1 | 9 | - | 63 |
| Ninilchik Village Traditional Council (M98) | 168 | 10 | 85 | 7 | 270 |
| Nondalton Village (M99) | 169 | 7 | 40 | 3 | 219 |
| Northway Village (N01) | 211 | 12 | 58 | - | 281 |
| Nulato Village (N02) | 452 | 6 | 62 | 3 | 523 |
| Pedro Bay Village (N03) | 42 | - | 19 | - | 61 |
| Rampart Village (N04) | 47 | 4 | 15 | 1 | 67 |
| Native Village of Ruby (N05) | 200 | 11 | 31 | 6 | 248 |
| Village of Salsmanoff (N06) | 42 | 8 | 31 | 7 | 88 |
| Seldovia Village Tribe (N07) | 182 | 8 | 84 | 3 | 277 |
| Slana (N08) | - | - | - | 2 | 2 |
| Shageluk Native Village (N09) | 105 | 2 | 13 | - | 120 |
| Native Village of Stevens (N10) | 105 | 1 | 8 | - | 114 |
| Village of Stony River (N11) | 45 | - | 4 | 1 | 50 |
| Takotna Village (N12) | 13 | - | 7 | - | 20 |
| Native Village of Tanacross (N13) | 148 | 6 | 50 | 1 | 205 |
| Native Village of Tanana (N15) | 306 | 26 | 50 | 12 | 394 |
| Tanana Chiefs (N16) | 55 | 4 | 24 | 7 | 90 |
| Native Village of Tazlina (N17) | 52 | 3 | 10 | 1 | 66 |
| Tekida Village (N18) | 19 | 1 | 1 | - | 21 |
| Native Village of Tetlin (N19) | 168 | 14 | 17 | - | 199 |
| Tok (N20) | - | 7 | 3 | 1 | 11 |
| Native Village of Tyonek (N21) | 124 | 8 | 44 | 2 | 178 |
| Village of Venetie (N22) | 275 | 8 | 41 | 4 | 328 |
| Wiseman (N23) | - | - | 1 | - | 1 |
| Kenaitze Indian Tribe (N24) | 527 | 17 | 306 | 8 | 858 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|---|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Tlingit-Haida tribal grouping (N28-N65, N69-N86) | 15,256 | 859 | 9,331 | 634 | 26,080 |
| Angoon Community Association (N28) | 20 | 5 | 17 | 2 | 44 |
| Central Council of the Tlingit and Haida Indian Tribes (N29) | 207 | 20 | 110 | 8 | 345 |
| Chilkat Indian Village (Klukwan) (N30) | 90 | 4 | 37 | 4 | 135 |
| Chilkoot Indian Association (Haines) (N31) | 50 | 4 | 32 | 1 | 87 |
| Craig Community Association (N32) | 5 | - | 7 | 2 | 14 |
| Douglas Indian Association (N33) | 11 | 1 | 15 | 2 | 29 |
| Haida (N34) | 1,398 | 1,781 | 967 | 1,076 | 5,222 |
| Hoonah Indian Association (N35) | 54 | 30 | 15 | 1 | 100 |
| Hydaburg Cooperative Association (N36) | 99 | 2 | 9 | 2 | 112 |
| Organized Village of Kake (N37) | 212 | 12 | 34 | 1 | 259 |
| Organized Village of Kasaan (N38) | 6 | 2 | 5 | - | 13 |
| Ketchikan Indian Corporation (N40) | 428 | 31 | 162 | 8 | 629 |
| Klawock Cooperative Association (N41) | 30 | 6 | 13 | 7 | 56 |
| Pelican (N43) | 1 | - | - | - | 1 |
| Petersburg Indian Association (N44) | 20 | 1 | 5 | 1 | 27 |
| Organized Village of Saxman (N45) | 59 | 5 | 14 | 3 | 81 |
| Sitka Tribe of Alaska (N46) | 534 | 32 | 217 | 18 | 801 |
| Tenakee Springs (N47) | - | - | - | - | - |
| Tlingit (N48) | 9,777 | 2,332 | 6,456 | 1,525 | 20,090 |
| Wrangell Cooperative Association (N49) | 10 | 4 | 9 | 1 | 24 |
| Yakutat Tlingit Tribe (N50) | 102 | 2 | 37 | 5 | 146 |
| Sealaska Corporation (Southeast Alaska) (N60) | 385 | 80 | 143 | 30 | 638 |
| Skagway Village (N65) | 18 | - | 1 | 1 | 20 |
| Tsimshian tribal grouping (N66-N68) | 2,307 | 240 | 1,010 | 198 | 3,755 |
| Metlakatla Indian Community, Annette Island Reserve (N66) | 779 | 18 | 120 | 2 | 919 |
| Tsimshian (N67) | 1,512 | 254 | 889 | 198 | 2,853 |
| Inupiat tribal grouping (N67-P29, P33-P37) | 24,859 | 877 | 7,051 | 573 | 33,360 |
| American Eskimo (N67) | 14 | 2 | 7 | 2 | 25 |
| Eskimo (N68) | 2,981 | 416 | 1,525 | 249 | 5,171 |
| Greenland Eskimo (N69) | - | - | 5 | - | 5 |
| Inuit (N75) | 898 | 64 | 813 | 103 | 1,878 |
| Native Village of Ambler (N79) | 218 | 2 | 15 | - | 235 |
| Village of Anaktuvuk Pass (N81) | 232 | - | 25 | - | 257 |
| Inupiat Community of the Arctic Slope (N82) | 37 | 2 | 8 | 3 | 50 |
| Arctic Slope Corporation (N83) | 693 | 64 | 140 | 5 | 902 |
| Atkasuk Village (Atkasook) (N84) | 124 | 1 | - | - | 125 |
| Native Village of Barrow Inupiat Traditional Government (N85) | 1,053 | 51 | 118 | 4 | 1,226 |
| Bering Straits Inupiat (N86) | 732 | 39 | 269 | 7 | 1,047 |
| Native Village of Brevig Mission (N87) | 338 | - | 14 | - | 352 |
| Native Village of Buckland (N88) | 374 | 2 | 10 | - | 386 |
| Chirik Eskimo Community (Golovin) (N89) | 172 | 3 | 29 | - | 204 |
| Native Village of Council (N90) | 51 | 14 | 12 | 2 | 79 |
| Native Village of Deering (N91) | 97 | - | 8 | - | 105 |
| Native Village of Elm (N92) | 301 | - | 17 | - | 318 |
| Native Village of Diomedea (Inalik) (N94) | 164 | 2 | 12 | 2 | 180 |
| Inupiat (Inupiaq) (N96) | 5,548 | 419 | 2,541 | 227 | 8,735 |
| Kaktovik Village (Barter Island) (N97) | 133 | 1 | 2 | - | 136 |
| Kawerak (N98) | 24 | 4 | 18 | - | 46 |
| Native Village of Kiana (N99) | 372 | 4 | 38 | 4 | 418 |
| Native Village of Kivalina (P01) | 365 | 1 | 7 | - | 373 |
| Native Village of Kobuk (P02) | 149 | - | 5 | 1 | 155 |
| Native Village of Kotzebue (P03) | 709 | 32 | 114 | 5 | 860 |
| Native Village of Koyuk (P04) | 360 | 3 | 20 | - | 383 |
| Nana Inupiat (P07) | 1,196 | 45 | 356 | 11 | 1,608 |
| Native Village of Noatak (P08) | 498 | 3 | 20 | - | 521 |
| Nome Eskimo Community (P09) | 774 | 21 | 315 | 11 | 1,121 |
| Noorvik Native Community (P10) | 523 | 3 | 36 | - | 562 |
| Native Village of Nuiqsut (Nookisut) (P11) | 208 | - | 3 | - | 211 |
| Native Village of Point Hope (P12) | 665 | 9 | 37 | 2 | 713 |
| Native Village of Point Lay (P13) | 111 | 3 | 8 | - | 122 |
| Native Village of Selawik (P14) | 746 | 10 | 89 | 1 | 846 |
| Native Village of Shaktolik (P15) | 246 | 2 | 3 | 5 | 256 |
| Native Village of Shishmanek (P16) | 587 | 1 | 13 | - | 601 |
| Native Village of Shungnak (P17) | 265 | 1 | 15 | - | 281 |
| Village of Solomon (P18) | 29 | 3 | 30 | 1 | 63 |
| Native Village of Teller (P19) | 121 | 6 | 9 | - | 136 |
| Native Village of Unalakleet (P20) | 623 | 5 | 78 | - | 706 |
| Village of Wainwright (P21) | 33 | - | 4 | - | 37 |
| Native Village of Wales (P22) | 150 | - | 49 | - | 199 |
| Native Village of White Mountain (P23) | 306 | 21 | 45 | 1 | 373 |
| Native Village of Mary's Igloo (P25) | 71 | 1 | 1 | - | 73 |
| King Island Native Community (P26) | 274 | 9 | 62 | 6 | 351 |
| Chevak Native Village (P36) | 905 | 7 | 50 | 3 | 965 |
| Native Village of Mekoryuk (P37) | 187 | 7 | 15 | 2 | 211 |
| Yupik tribal grouping (P30-P32, P36-R10) | 28,927 | 691 | 3,961 | 310 | 33,889 |
| Native Village of Gambell (P30) | 633 | - | 6 | - | 639 |
| Native Village of Savoonga (P31) | 659 | 1 | 18 | - | 678 |
| Siberian Yupik (P32) | 147 | 11 | 69 | 8 | 235 |
| Akiachak Native Community (P38) | 591 | 2 | 6 | - | 599 |
| Akiak Native Community (P39) | 309 | - | 9 | 4 | 322 |
| Village of Alakanuk (P40) | 646 | 4 | 28 | - | 678 |
| Native Village of Aleknagik (P41) | 166 | 1 | 25 | - | 192 |
| Yupit of Andreafski (P42) | 158 | 1 | 15 | 1 | 175 |
| Village of Aniak (P43) | 207 | 4 | 28 | - | 239 |
| Village of Atmautluak (P44) | 267 | 4 | 4 | - | 275 |
| Orutsararmut Native Village (Bethel) (P45) | 915 | 23 | 113 | - | 1,051 |
| Village of Bill Moore's Slough (P46) | 53 | - | 1 | - | 54 |
| Bristol Bay (P47) | 637 | 47 | 203 | 13 | 900 |
| Calista (P48) | 1,028 | 51 | 213 | 14 | 1,306 |
| Village of Chefornak (P49) | 420 | - | 5 | - | 425 |
| Native Village of Hamilton (P50) | 12 | - | 5 | - | 17 |
| Native Village of Chuathbaluk (P51) | 114 | 2 | 9 | - | 125 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|--|---|--|---|--|--|
| | One tribal grouping reported | Two or more tribal groupings reported ¹ | One tribal grouping reported | Two or more tribal groupings reported ¹ | |
| | (1) | (2) | (3) | (4) | |
| Village of Clark's Point (P52) | 94 | 2 | 7 | 1 | 104 |
| Village of Crooked Creek (P53) | 104 | 1 | 15 | - | 120 |
| Curyung Tribal Council (Native Village of Dillingham) (P54) | 776 | 17 | 220 | 6 | 1,019 |
| Native Village of Eek (P55) | 278 | 2 | 2 | 1 | 283 |
| Native Village of Ekwik (P56) | 41 | - | 12 | - | 53 |
| Ekwok Village (P57) | 115 | 2 | 16 | 1 | 134 |
| Emmonak Village (P58) | 730 | 7 | 15 | - | 752 |
| Native Village of Goodnews Bay (P59) | 244 | 3 | 9 | - | 256 |
| Native Village of Hooper Bay (Naparyamiut) (P60) | 793 | 7 | 41 | 1 | 842 |
| Iqurmut Traditional Council (P61) | 247 | - | 8 | - | 255 |
| Village of Katskag (P62) | 197 | 4 | 23 | - | 224 |
| Native Village of Kasigluk (P63) | 577 | 1 | 15 | 1 | 594 |
| Native Village of Kipnuk (P64) | 668 | - | 8 | - | 676 |
| New Koliganek Village Council (P65) | 211 | - | 5 | - | 216 |
| Native Village of Kongiganek (P66) | 395 | 2 | 13 | - | 410 |
| Village of Kotik (P67) | 446 | 3 | 7 | - | 456 |
| Organized Village of Kwethluk (P68) | 724 | 3 | 26 | 1 | 754 |
| Native Village of Kwigillingok (P69) | 327 | 7 | 7 | 2 | 343 |
| Levelock Village (P70) | 83 | 5 | 5 | - | 93 |
| Village of Lower Katskag (P71) | 258 | - | 13 | - | 271 |
| Manokotak Village (P72) | 439 | 3 | 16 | 2 | 460 |
| Native Village of Marshall (Fortuna Ledge) (P73) | 272 | - | 284 | 4 | 560 |
| Village of Ohogamiut (P74) | 88 | 1 | 2 | - | 91 |
| Ase'carsarmiut Tribe (P75) | 822 | 11 | 35 | - | 868 |
| Naknek Native Village (P76) | 155 | 21 | 79 | 9 | 264 |
| Native Village of Napaimute (P77) | 38 | 4 | 8 | 1 | 51 |
| Native Village of Napakiak (P78) | 365 | 1 | 1 | - | 367 |
| Native Village of Napasniak (P79) | 397 | 1 | 2 | - | 400 |
| Nevhalei Village (P80) | 150 | 1 | 21 | - | 172 |
| New Stuyahok Village (P81) | 522 | 2 | 17 | - | 541 |
| Newtok Village (P82) | 380 | - | 7 | - | 387 |
| Native Village of Nightmute (P83) | 185 | 1 | 1 | - | 187 |
| Native Village of Nunapitchook (P84) | 434 | - | 7 | 1 | 442 |
| Oscarville Traditional Village (P85) | 62 | - | - | - | 62 |
| Pilot Station Traditional Village (P86) | 71 | 3 | 12 | - | 86 |
| Native Village of Pitka's Point (P87) | 109 | - | - | - | 109 |
| Platinum Traditional Village (P88) | 36 | - | 1 | - | 37 |
| Portage Creek Village (Ohgsenakale) (P89) | 15 | - | 10 | - | 25 |
| Native Village of Kwinhagak (P90) | 637 | - | 37 | - | 674 |
| Village of Red Devil (P91) | 3 | - | 2 | - | 5 |
| Native Village of Saint Michael (P92) | 106 | - | 8 | - | 114 |
| Native Village of Scammon Bay (P93) | 518 | - | 17 | - | 535 |
| Native Village of Nunam Iqua (Sheldon's Point) (P94) | 192 | 2 | 4 | - | 198 |
| Village of Sleetmute (P95) | 69 | - | 5 | - | 74 |
| Stebbins Community Association (P96) | 552 | 1 | 10 | - | 563 |
| Traditional Village of Togiak (P97) | 678 | 1 | 128 | 1 | 808 |
| Nunakauyarmiut Tribe (Toksook Bay) (P98) | 572 | 3 | 34 | - | 609 |
| Tuluksak Native Community (P99) | 369 | - | - | - | 369 |
| Native Village of Tunutuliak (R01) | 355 | 2 | 8 | 1 | 366 |
| Native Village of Tununak (R02) | 303 | 4 | 11 | 3 | 321 |
| Twin Hills Village (R03) | 52 | 1 | 5 | - | 58 |
| Yup'ik (Yup'ik Eskimo) (R04) | 5,252 | 506 | 1,933 | 246 | 7,937 |
| Native Village of Georgetown (R06) | 13 | - | 3 | - | 16 |
| Algaaciq Native Village (St. Mary's) (R07) | 327 | 1 | 20 | 1 | 349 |
| Umkumiute Native Village (R08) | 36 | 1 | 1 | 1 | 39 |
| Chuloonavick Native Village (R09) | 33 | 4 | 1 | - | 38 |
| Aleut tribal grouping (R11-R98, S01-S99) | 11,920 | 723 | 6,108 | 531 | 19,282 |
| Aleut (R 11) | 5,866 | 631 | 4,173 | 484 | 11,154 |
| Aliutiq (R 16) | 241 | 30 | 135 | 16 | 422 |
| Native Village of Afognak (R 17) | 136 | 11 | 74 | 2 | 223 |
| Native Village of Tatitlek (R23) | 34 | 14 | 5 | 1 | 54 |
| Ugashik Village (R24) | 23 | 1 | 11 | - | 35 |
| Ernstoi Bay Aleut (R28) | 22 | 2 | 12 | 3 | 39 |
| Chignik Bay Tribal Council (Native Village of Chignik) (R29) | 63 | 3 | 25 | - | 91 |
| Chignik Lake Village (R30) | 102 | - | 5 | - | 107 |
| Egegik Village (R31) | 57 | - | 28 | - | 85 |
| Igiugig Village (R32) | 28 | - | 18 | - | 46 |
| Ivanoff Bay Village (R33) | 36 | - | 1 | - | 37 |
| King Salmon Tribe (R34) | 37 | - | 4 | - | 41 |
| Kokhanok Village (R35) | 125 | - | 17 | - | 142 |
| Native Village of Perryville (R36) | 24 | - | 2 | - | 26 |
| Native Village of Pilot Point (R37) | 56 | 1 | 28 | 1 | 86 |
| Native Village of Port Heiden (R38) | 89 | - | 10 | - | 99 |
| Native Village of Chanega (Chenegak) (R43) | 56 | 3 | 19 | 1 | 79 |
| Chugach Aleut (R44) | 101 | 18 | 42 | 4 | 165 |
| Chugach Corporation (R45) | 332 | 16 | 175 | 8 | 531 |
| Native Village of Nanwalek (English Bay) (R46) | 154 | 8 | 26 | 4 | 192 |
| Native Village of Port Graham (R47) | 82 | 2 | 11 | - | 95 |
| Native Village of Eyak (Cordova) (R51) | 202 | 16 | 154 | 12 | 384 |
| Native Village of Akhiok (R55) | 43 | 4 | 22 | 1 | 70 |
| Agdaagux Tribe of King Cove (R56) | 269 | - | 32 | - | 301 |
| Native Village of Karluk (R57) | 47 | 2 | 7 | 1 | 57 |
| Native Village of Kanatak (R58) | 50 | 1 | 7 | 1 | 59 |
| Kodiak (R59) | 73 | 5 | 42 | 2 | 122 |
| Koniag Aleut (R60) | 384 | 28 | 229 | 16 | 657 |
| Native Village of Larsen Bay (R61) | 120 | 1 | 32 | - | 153 |
| Village of Old Harbor (R62) | 305 | 4 | 44 | - | 353 |
| Native Village of Ouzinkie (R63) | 258 | 1 | 43 | 4 | 306 |
| Native Village of Port Lions (R64) | 137 | 6 | 19 | 1 | 163 |
| Lesnoi Village (Woody Island) (R65) | 72 | 4 | 32 | 7 | 115 |
| Sun'aq Tribe of Kodiak (R66) | 559 | 6 | 237 | 2 | 804 |
| Sugpiaq (R67) | 13 | 8 | 9 | 4 | 34 |
| Native Village of Akutan (R75) | 54 | 1 | 21 | - | 76 |

| American Indian and Alaska Native Tribe/Tribal grouping | American Indian and Alaska Native alone | | American Indian and Alaska Native in combination with one or more other races | | American Indian and Alaska Native alone or in any combination ¹ |
|---|---|---|---|---|--|
| | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ² | One tribe/Tribal grouping reported | Two or more tribes/Tribal groupings reported ³ | |
| | (1) | (2) | (3) | (4) | |
| Aleut Corporation (R76) | 107 | 3 | 25 | 3 | 138 |
| Native Village of Atka (R79) | 57 | 1 | 5 | - | 63 |
| Native Village of Belkofski (R80) | 22 | - | 6 | - | 28 |
| Native Village of Chignik Lagoon (R81) | 62 | - | 18 | - | 80 |
| King Cove (R82) | 41 | 1 | 5 | - | 47 |
| Native Village of False Pass (R83) | 25 | 1 | 4 | - | 30 |
| Native Village of Nelson Lagoon (R84) | 27 | - | 8 | - | 35 |
| Native Village of Nikolski (R85) | 2 | - | 1 | 2 | 5 |
| Pauloff Harbor Village (R86) | 49 | 1 | 10 | - | 60 |
| Qagan Tayagungin Tribe of Sand Point Village (R87) | 310 | - | 64 | 1 | 375 |
| Qawalangin Tribe of Unalaska (R88) | 213 | 1 | 82 | - | 296 |
| Saint George Island (R89) | 107 | 1 | 12 | - | 120 |
| Saint Paul Island (R90) | 416 | - | 34 | 1 | 451 |
| South Naknek Village (R92) | 68 | 4 | 17 | - | 89 |
| Unangan (Unalaska) (R93) | 14 | 3 | 10 | 1 | 28 |
| Native Village of Unga (R95) | 82 | - | 27 | 1 | 110 |
| Kaguyak Village (R96) | 6 | 4 | 2 | 1 | 13 |
| Alaska Native, not specified (M44-M51)³ | 19,731 | 173 | 9,896 | 133 | 29,933 |
| American Indian or Alaska Native tribes, not specified (300)⁴ | 693,709 | - | 852,253 | 1 | 1,545,963 |

- Represents zero.

¹ The numbers by American Indian and Alaska Native tribes do not add to the American Indian and Alaska Native total population. This is because the American Indian and Alaska Native tribes are tallies of the number of American Indian and Alaska Native responses rather than the number of American Indian or Alaska Native respondents. Respondents reporting several American Indian or Alaska Native groups are counted several times. For example, a respondent reporting "Cherokee and Navajo" would be included in the Cherokee as well as the Navajo numbers.

² Includes respondents who wrote in the generic term "American Indian."

³ Includes respondents who wrote in the generic term "Alaska Native."

⁴ Includes respondents who checked the "American Indian or Alaska Native" response category on the census questionnaire.

Notes:

Total population in Column 1 includes people who reported only one American Indian or Alaska Native tribe or who checked the American Indian or Alaska Native response category, but did not write-in a specified tribe. For example, a respondent who reported as Fort Sill Apache would be counted one time in the Fort Sill Apache data line, one time in the total Apache tribal grouping data line, one time in the Total population data line and one time in the Total tribes tallied data line.

Total population in Column 2 includes people who reported two or more American Indian or Alaska Native tribes. For example, a respondent who reported as both Fort Sill and Mescalero Apache would be counted one time in the Fort Sill Apache data line, once in the Mescalero Apache data line, once in the Total Apache tribal grouping data line, one time in the Total population data line, and twice in the Total tribes tallied data line.

Total population in Column 3 includes people who reported one American Indian or Alaska Native tribe, or who checked the American Indian or Alaska Native response category, but did not write-in a specified tribe, and who reported at least one other race. These races include White, Black or African American, Asian, Native Hawaiian and Other Pacific Islander, and Some other race. For example, a respondent who reported as both "White and American Indian and Alaska Native," and wrote in Fort Sill Apache, would be counted once each in the Fort Sill Apache data line, in the Total Apache tribal grouping data line, in the Total population data line, and in the Total tribes tallied data line.

Total population in Column 4 includes people who reported two or more American Indian or Alaska Native tribes and at least one or more other races. For example, a respondent who reported as both Fort Sill Apache and Mescalero Apache and as "White and Black or African American and American Indian or Alaska Native" would be counted in both the Fort Sill Apache and Mescalero Apache data lines once, the Total Apache tribal grouping data line once, the Total population once, and counted twice in the Total tribes tallied data line.

Total population in Column 5 represents the sum of people who reported in Column 1 through Column 4. This Column presents the maximum number of people in the selected American Indian and Alaska Native tribe/tribal grouping.

Table DP-1. Profile of General Demographic Characteristics: 2010

Geographic Area: Florida

[For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>]

| Subject | Number | Percent | Subject | Number | Percent |
|------------------------------|-------------------|--------------|--|-------------------|--------------|
| Total population..... | 18,801,310 | 100.0 | SEX AND AGE (continued) | | |
| AGE | | | 16 years and over..... | 15,283,266 | 81.3 |
| Under 5 years..... | 1,073,506 | 5.7 | Male..... | 7,391,989 | 39.3 |
| 5 to 9 years..... | 1,080,255 | 5.7 | Female..... | 7,891,277 | 42.0 |
| 10 to 14 years..... | 1,130,847 | 6.0 | 18 years and over..... | 14,799,219 | 78.7 |
| 15 to 19 years..... | 1,228,382 | 6.5 | Male..... | 7,142,364 | 38.0 |
| 20 to 24 years..... | 1,228,758 | 6.5 | Female..... | 7,656,855 | 40.7 |
| 25 to 29 years..... | 1,179,227 | 6.3 | 21 years and over..... | 14,030,290 | 74.6 |
| 30 to 34 years..... | 1,110,318 | 5.9 | Male..... | 6,748,874 | 35.9 |
| 35 to 39 years..... | 1,178,467 | 6.3 | Female..... | 7,281,416 | 38.7 |
| 40 to 44 years..... | 1,252,787 | 6.7 | 62 years and over..... | 3,936,101 | 20.9 |
| 45 to 49 years..... | 1,401,202 | 7.5 | Male..... | 1,769,011 | 9.4 |
| 50 to 54 years..... | 1,340,291 | 7.1 | Female..... | 2,167,090 | 11.5 |
| 55 to 59 years..... | 1,202,418 | 6.4 | 65 years and over..... | 3,259,602 | 17.3 |
| 60 to 64 years..... | 1,135,250 | 6.0 | Male..... | 1,450,426 | 7.7 |
| 65 to 69 years..... | 959,233 | 5.1 | Female..... | 1,809,176 | 9.6 |
| 70 to 74 years..... | 768,707 | 4.1 | | | |
| 75 to 79 years..... | 615,514 | 3.3 | RACE | | |
| 80 to 84 years..... | 482,023 | 2.6 | Total population..... | 18,801,310 | 100.0 |
| 85 years and over..... | 434,125 | 2.3 | One race..... | 18,328,733 | 97.5 |
| SEX AND AGE | | | White..... | 14,109,162 | 75.0 |
| Male..... | 9,189,355 | 48.9 | Black or African American..... | 2,999,862 | 16.0 |
| Under 5 years..... | 547,985 | 2.9 | American Indian and Alaska Native..... | 71,458 | 0.4 |
| 5 to 9 years..... | 551,053 | 2.9 | Asian..... | 454,821 | 2.4 |
| 10 to 14 years..... | 578,689 | 3.1 | Asian Indian..... | 128,735 | 0.7 |
| 15 to 19 years..... | 631,287 | 3.4 | Chinese..... | 72,248 | 0.4 |
| 20 to 24 years..... | 627,063 | 3.3 | Filipino..... | 90,223 | 0.5 |
| 25 to 29 years..... | 594,897 | 3.2 | Japanese..... | 13,224 | 0.1 |
| 30 to 34 years..... | 555,239 | 3.0 | Korean..... | 26,205 | 0.1 |
| 35 to 39 years..... | 585,141 | 3.1 | Vietnamese..... | 58,470 | 0.3 |
| 40 to 44 years..... | 623,330 | 3.3 | Other Asian ¹ | 65,716 | 0.3 |
| 45 to 49 years..... | 691,335 | 3.7 | Native Hawaiian and Other Pacific Islander..... | 12,286 | 0.1 |
| 50 to 54 years..... | 650,033 | 3.5 | Native Hawaiian..... | 2,809 | 0.0 |
| 55 to 59 years..... | 569,009 | 3.0 | Guamanian or Chamorro..... | 3,747 | 0.0 |
| 60 to 64 years..... | 533,868 | 2.8 | Samoa..... | 1,153 | 0.0 |
| 65 to 69 years..... | 448,193 | 2.4 | Other Pacific Islander ² | 4,577 | 0.0 |
| 70 to 74 years..... | 357,908 | 1.9 | Some other race..... | 681,144 | 3.6 |
| 75 to 79 years..... | 280,087 | 1.5 | Two or more races..... | 472,577 | 2.5 |
| 80 to 84 years..... | 205,925 | 1.1 | White; American Indian and Alaska Native ³ | 55,974 | 0.3 |
| 85 years and over..... | 158,313 | 0.8 | White; Asian ³ | 70,932 | 0.4 |
| Female..... | 9,611,955 | 51.1 | White; Black or African American ³ | 112,370 | 0.6 |
| Under 5 years..... | 525,521 | 2.8 | White; Some other race ³ | 106,667 | 0.6 |
| 5 to 9 years..... | 529,202 | 2.8 | Race alone or in combination with one or more other races: ⁴ | | |
| 10 to 14 years..... | 552,158 | 2.9 | White..... | 14,488,435 | 77.1 |
| 15 to 19 years..... | 597,095 | 3.2 | Black or African American..... | 3,200,663 | 17.0 |
| 20 to 24 years..... | 601,695 | 3.2 | American Indian and Alaska Native..... | 162,562 | 0.9 |
| 25 to 29 years..... | 584,330 | 3.1 | Asian..... | 573,083 | 3.0 |
| 30 to 34 years..... | 555,079 | 3.0 | Native Hawaiian and Other Pacific Islander..... | 39,914 | 0.2 |
| 35 to 39 years..... | 593,326 | 3.2 | Some other race..... | 844,318 | 4.5 |
| 40 to 44 years..... | 629,457 | 3.3 | | | |
| 45 to 49 years..... | 709,867 | 3.8 | HISPANIC OR LATINO BY ORIGIN | | |
| 50 to 54 years..... | 690,258 | 3.7 | Total population..... | 18,801,310 | 100.0 |
| 55 to 59 years..... | 633,409 | 3.4 | Hispanic or Latino (of any race)..... | 4,223,806 | 22.5 |
| 60 to 64 years..... | 601,382 | 3.2 | Mexican..... | 629,718 | 3.3 |
| 65 to 69 years..... | 511,040 | 2.7 | Puerto Rican..... | 847,550 | 4.5 |
| 70 to 74 years..... | 410,799 | 2.2 | Cuban..... | 1,213,438 | 6.5 |
| 75 to 79 years..... | 335,427 | 1.8 | Other Hispanic or Latino ⁵ | 1,533,100 | 8.2 |
| 80 to 84 years..... | 276,098 | 1.5 | Not Hispanic or Latino..... | 14,577,504 | 77.5 |
| 85 years and over..... | 275,812 | 1.5 | | | |
| Median age (years)..... | 40.7 | (X) | | | |
| Male..... | 39.4 | (X) | | | |
| Female..... | 42.1 | (X) | | | |

Table DP-1. Profile of General Demographic Characteristics: 2010 (continued)

Geographic Area: Florida

[For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>]

| Subject | Number | Percent | Subject | Number | Percent |
|---|------------|---------|--|------------|---------|
| HISPANIC OR LATINO AND RACE | | | HOUSEHOLDS BY TYPE (continued) | | |
| Total population..... | 18,801,310 | 100.0 | Nonfamily households ⁷ | 2,585,327 | 34.8 |
| Hispanic or Latino..... | 4,223,806 | 22.5 | Householder living alone..... | 2,021,781 | 27.2 |
| White alone..... | 3,224,440 | 17.2 | Male..... | 881,965 | 11.9 |
| Black or African American alone..... | 148,762 | 0.8 | 65 years and over..... | 250,136 | 3.4 |
| American Indian and Alaska Native alone..... | 24,193 | 0.1 | Female..... | 1,139,816 | 15.4 |
| Asian alone..... | 9,605 | 0.1 | 65 years and over..... | 574,253 | 7.7 |
| Native Hawaiian and Other Pacific Islander alone..... | 2,561 | 0.0 | Households with individuals under 18 years..... | 2,209,965 | 29.8 |
| Some other race alone..... | 632,682 | 3.4 | Households with individuals 65 years and over..... | 2,327,682 | 31.4 |
| Two or more races alone..... | 181,563 | 1.0 | Average household size..... | 2.48 | (X) |
| Not Hispanic or Latino..... | 14,577,504 | 77.5 | Average family size ⁷ | 3.01 | (X) |
| White alone..... | 10,884,722 | 57.9 | HOUSING OCCUPANCY | | |
| Black or African American alone..... | 2,851,100 | 15.2 | Total housing units..... | 8,989,580 | 100.0 |
| American Indian and Alaska Native alone..... | 47,265 | 0.3 | Occupied housing units..... | 7,420,802 | 82.5 |
| Asian alone..... | 445,216 | 2.4 | Vacant housing units..... | 1,568,778 | 17.5 |
| Native Hawaiian and Other Pacific Islander alone..... | 9,725 | 0.1 | For rent..... | 371,626 | 4.1 |
| Some other race alone..... | 48,462 | 0.3 | Rented, not occupied..... | 15,438 | 0.2 |
| Two or more races alone..... | 291,014 | 1.5 | For sale only..... | 198,232 | 2.2 |
| RELATIONSHIP | | | Sold, not occupied..... | 31,911 | 0.4 |
| Total population..... | 18,801,310 | 100.0 | For seasonal, recreational, or occasional use..... | 657,070 | 7.3 |
| In households..... | 18,379,601 | 97.8 | All other vacants..... | 294,501 | 3.3 |
| Householder..... | 7,420,802 | 39.5 | Homeowner vacancy rate (percent) ⁸ | 3.8 | (X) |
| Spouse ⁶ | 3,457,149 | 18.4 | Rental vacancy rate (percent) ⁹ | 13.2 | (X) |
| Child..... | 4,884,582 | 26.0 | HOUSING TENURE | | |
| Own child under 18 years..... | 3,429,355 | 18.2 | Occupied housing units..... | 7,420,802 | 100.0 |
| Other relatives..... | 1,362,543 | 7.2 | Owner-occupied housing units..... | 4,998,979 | 67.4 |
| Under 18 years..... | 476,474 | 2.5 | Renter-occupied housing units..... | 2,421,823 | 32.6 |
| 65 years and over..... | 246,306 | 1.3 | Total Population in Households..... | 18,379,601 | 100.0 |
| Nonrelatives..... | 1,254,525 | 6.7 | In owner-occupied housing units..... | 12,351,838 | 67.2 |
| Under 18 years..... | 79,753 | 0.4 | In renter-occupied housing units..... | 6,027,763 | 32.8 |
| 65 years and over..... | 88,767 | 0.5 | Average household size of owner-occupied units..... | 2.47 | (X) |
| Unmarried partner..... | 544,907 | 2.9 | Average household size of renter-occupied units..... | 2.49 | (X) |
| In group quarters..... | 421,709 | 2.2 | HOUSEHOLDS BY TYPE | | |
| Institutionalized population..... | 254,506 | 1.4 | Total households..... | 7,420,802 | 100.0 |
| Male..... | 186,625 | 1.0 | Family households (families) ⁷ | 4,835,475 | 65.2 |
| Female..... | 67,881 | 0.4 | With own children under 18 years..... | 1,932,725 | 26.0 |
| Noninstitutionalized population..... | 167,203 | 0.9 | Husband-Wife families..... | 3,457,149 | 46.6 |
| Male..... | 92,451 | 0.5 | With own children under 18 years..... | 1,230,374 | 16.6 |
| Female..... | 74,752 | 0.4 | Male householder, no wife present..... | 373,284 | 5.0 |
| HOUSEHOLDS BY TYPE | | | With own children under 18 years..... | 172,008 | 2.3 |
| Total households..... | 7,420,802 | 100.0 | Female householder, no husband present..... | 1,005,042 | 13.5 |
| Family households (families) ⁷ | 4,835,475 | 65.2 | With own children under 18 years..... | 530,343 | 7.1 |
| With own children under 18 years..... | 1,932,725 | 26.0 | | | |
| Husband-Wife families..... | 3,457,149 | 46.6 | | | |
| With own children under 18 years..... | 1,230,374 | 16.6 | | | |
| Male householder, no wife present..... | 373,284 | 5.0 | | | |
| With own children under 18 years..... | 172,008 | 2.3 | | | |
| Female householder, no husband present..... | 1,005,042 | 13.5 | | | |
| With own children under 18 years..... | 530,343 | 7.1 | | | |

(X) Not applicable.

¹ Other Asian alone, or two or more Asian categories.² Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.³ One of the four most commonly reported multiple-race combinations nationwide in Census 2000.⁴ In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.⁵ This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."⁶ "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."⁷ "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.⁸ The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.⁹ The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

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Harold C. Frazier

SECRETARY
EvAnn White Feather

TREASURER
Benita Clark

VICE-CHAIRMAN
Robert Chasing Hawk



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DISTRICT 6
Tuffy Thompson
Tater Ward

July 2, 2018

Via Electronic Mail

Gina L. Allery
Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: *Written Comments of Cheyenne River Sioux Tribe Regarding Volkswagen Indian Tribe Trust Allocation*

Dear Deputy Director Allery:

The Cheyenne River Sioux Tribe (Tribe) submits these written comments regarding the distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Tribal Trust Agreement) that was established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

The Tribe stands by the comments it made in its letter of April 3, 2018. In all oversubscribed funding cycles, beginning with the first funding cycle, a population-based allocation formula should be used that allocates a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010

Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, provided that the ceiling for an allocation in a single funding cycle should be set at the amount in the Indian Tribe Beneficiary's funding request submitted to the Trustee or \$1,200,000, whichever is less.

This population-based approach is fair and equitable. Weighting the shares of Indian Tribe Beneficiaries in accordance with the total population living within the Indian country of each Indian Tribe insures that the Indian country residents of Indian Tribe Beneficiaries will receive an equal per capita share of the Tribal settlement funds. Further, Tribes with larger populations generally have greater transportation needs and greater transportation impacts (more tribally-owned vehicles, more miles driven, more NOx emissions, etc.) than Tribes with smaller populations.

If additional factors are considered, in addition to population, they should include land base (including Reservation lands and off-reservation trust lands) and financial need (measured by per capita income, poverty rate, or other similar factors).

Tribes with larger land bases should also receive more funding than Tribes with smaller land bases because they have greater transportation needs and impacts (more miles of roads, more privately-owned vehicles, more government-owned vehicles, more miles driven, more NOx emissions, etc.). For example, the Cheyenne River Indian Reservation encompasses 2.8 million acres of land in north-central South Dakota and is approximately the same size as the State of Connecticut. The Reservation includes 832 miles of County roads, 307 miles of Bureau of Indian Affairs roads, 232 miles of State highways, and 52 miles of Tribal roads. High-NOx-emission school buses and tractor trailers drive hundreds, if not thousands, of miles per day on the Reservation, transporting students and hauling equipment, building materials, fuel, and other goods.


Tribes with greater financial need should receive more funding than those with less financial need. Without Volkswagen settlement funds, poorer Tribes are less able than richer Tribes to independently fund programs to reduce NOx emissions on their Reservations.

The Cheyenne River Indian Reservation is home to two of the poorest counties in the United States. The 2010 Census reported that Ziebach County was the poorest county in the United States and Dewey County was the seventy-eighth (78th) poorest county in the United States. Economic conditions have not improved substantially since 2010. According to the most recent data available from the U.S. Census Bureau, Dewey County had a poverty rate of 27.5% in 2016 and Ziebach County had a poverty rate of 43.7% in 2016. These factors should be taken into consideration.

The Cheyenne River Sioux Tribe is opposed to a modification of the deadlines in the Indian Trust Agreement for Indian Tribes to file Certifications of Beneficiary Status. Twenty-nine (29) Indian Tribes, including the Cheyenne River Sioux Tribe, met the deadlines established in the Indian Trust Agreement and were designated as Indian Tribe Beneficiaries by the Trustee. Those deadlines should not be modified or amended.

The Cheyenne River Sioux Tribe thanks you for your consideration of these comments.

Sincerely,



Harold C. Frazier, Chairman
Cheyenne River Sioux Tribe



Steven J. Gunn
Special Counsel to the Cheyenne River Sioux Tribe



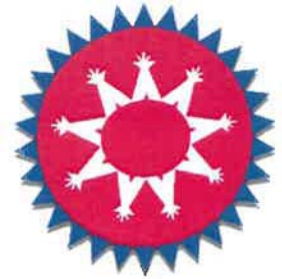
Oglala Sioux Tribe

PINE RIDGE INDIAN RESERVATION

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1(605) 867-5821 Ext. 8420 (O) / 1(605) 867-6076 (F)



President Troy "Scott" Weston

July 2, 2018

Via Electronic Mail

Gina L. Allery
Deputy Director
Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: *Written Comments of Oglala Sioux Tribe Regarding Volkswagen Indian Tribe Trust Allocation*

Dear Deputy Director Allery:

The Oglala Sioux Tribe (Tribe) submits these written comments regarding the distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (Tribal Trust Agreement) that was established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

The Tribe stands by the comments it made in its letter of April 3, 2018. In all oversubscribed funding cycles, beginning with the first funding cycle, a population-based allocation formula should be used that allocates a share to each Indian Tribe Beneficiary weighted in accordance with the total population living within the Indian country of each Indian Tribe, according to the 2010 Census, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, provided that the ceiling for an allocation in a single funding cycle should be set at the amount in the Indian Tribe Beneficiary's funding request submitted to the Trustee or \$1,200,000, whichever is less.

July, 2018
Page 2

This population-based approach is fair and equitable. Weighting the shares of Indian Tribe Beneficiaries in accordance with the total population living within the Indian country of each Indian Tribe insures that the Indian country residents of Indian Tribe Beneficiaries will receive an equal per capita share of the Tribal settlement funds. Further, Tribes with larger populations generally have greater transportation needs and greater transportation impacts (more tribally-owned vehicles, more miles driven, more NOx emissions, etc.) than Tribes with smaller populations.

If additional factors are considered, in addition to population, they should include land base (including Reservation lands and off-reservation trust lands) and financial need (measured by per capita income, poverty rate, or other similar factors).

The Tribe is opposed to any modification of the deadlines in the Indian Trust Agreement for Indian Tribes to file Certifications of Beneficiary Status. Twenty-nine (29) Indian Tribes, including the Oglala Sioux Tribe, met the deadlines established in the Indian Trust Agreement and were designated as Indian Tribe Beneficiaries by the Trustee. Those deadlines should not be modified or amended.

The Tribe thanks you for your consideration of these comments.

Sincerely,



Mason Big Crow
Tribal Treasurer



Steven J. Gunn
Special Counsel to the Oglala Sioux Tribe



CHEROKEE NATION
OFFICE OF THE SECRETARY OF
NATURAL RESOURCES

Sara Hill
Secretary of
Natural Resources

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

July 23, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530
Email: OTJ@usdoj.gov

Re: Proposed Material Modification to the oversubscription allocation method in the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

Dear Sir or Madam:

This letter concerns the proposed Material Modification to the oversubscription allocation method in the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries ("Indian Trust Agreement"). Reference is made to the March 5, 2018 order issued by the United States District Court for the Northern District of California ("March 5 Order"); the notice issued by the Trustee Wilmington Trust, N.A. ("Trustee") on that same day; the March 16, 2018 letter issued by the Office of Tribal Justice ("March 16 Letter"); the call held on March 21, 2018 regarding these issues ("March 21 Call"); the March 27, 2018 letter issued by the Office of Tribal Justice ("March 27 Letter"); the call held on March 27, 2018 regarding these issues ("March 27 Call"); the Cherokee Nation's letter to the Trustee, U.S. Department of Justice ("DOJ"), and U.S. Environmental Protection Agency ("EPA") dated March 16, 2018; and the Cherokee Nation's letter to the Office of Tribal Justice dated March 26, 2018. For reasons set forth in the Cherokee Nation's previous letters and in these comments, the Cherokee Nation believes that the Trustee should allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement, and that any changes to the allocation formula in subsequent funding cycles should ensure that the funding is allocating in a way that meets the fundamental purpose of the trust, which is to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where they were, are, or will be operated.

July 23, 2018

Page 2 of 4

The proposed material modification would both gut the provisions that tie mitigation funding to NOx emissions from the Subject Vehicles, and exacerbate the oversubscription problems already identified by the Trustee.

There are several reasons why the proposal to distribute half the funding equally by tribe is a poor one. To be clear, the Cherokee Nation does not support any approach that would equally divide funds amongst the eligible beneficiary tribes. As detailed in the Cherokee Nation's prior letters, dividing funds equally by tribe bears no nexus to the illegal VWs. Nor would it be fair to larger tribes, for the obvious reason that treating a tribe with less than a hundred people the same as a tribe with hundreds of thousands of people will not result in an equitable distribution.

Dividing funds equally is also unfair to tribes that did not apply in year one in reliance on the Trustee distributing funds as set forth in the Indian Trust Agreement. Any approach should not be based solely on the tribes that applied this year, and must take into account the 500-plus other tribes that can apply in future funding cycles as well. If every tribe is guaranteed an equal share of half the funding, many more tribes will apply. This is especially the case if the retroactive change advocated by the United States is enacted and word has spread that in the first year tribes with a few dozen members each received over a hundred and fifteen thousand dollars. That will exacerbate the oversubscription issue, and cut the funding 'pie' into even smaller pieces. In future years the size of the awards will be driven down far below the minimum hundred and fifteen thousand dollar award the United States has promised to small tribes that applied the first year. This is particularly problematic given the limited types of projects allowed under the Indian Trust Agreement, and will likely require another round of modifications to the agreement.

The Cherokee Nation believes the most appropriate basis for allocating funds under the Indian Trust Agreement remains a per capita method, and that the most pressing modification needed is an expanded project list.¹ Bruce Buckheit, former Senior Counsel in the Environmental Enforcement Section and Director of the EPA's Air Enforcement Division for nearly a decade, agrees. *See* Declaration of Bruce Buckheit dated June 15, 2018 (attached hereto). There are some modifications that the Cherokee Nation would support, including a one-time minimum award of \$10,000.00 with the remainder distributed by population, reduced number of funding cycles, and clarification on allowing accumulation/banking of awards. The Cherokee Nation also supports the modification suggested by Bruce Buckheit to simplify the application process for tribes that will receive a small award. One way this could be implemented is to allow tribes to request a minimum award, and provide for a simplified application process for those tribes that do so. The material modification proposed by the Trustee, however, cuts in half the amount of money that is awarded per capita, creating massive inequity for larger Indian tribes and moving mitigation funds away from the areas where illegal VWs are, were, or will come to be located.

¹ The Nation has long asked for the project list to be expanded. Many of the projects listed in Appendix D-2, which include airports, port facilities, tugboats and other large-scale projects, are too expensive for all but the most affluent tribes. In addition, many of these types of projects simply do not reflect the real needs of Indian country. Tribes are diverse in size and in need, and the Trustees' extremely limited list of eligible mitigation projects does not serve or acknowledge that diversity. Despite this, the United States has not even considered changing the projects listed in Appendix D-2, instead limiting discussion to changing the allocation formula.

July 23, 2018

Page 3 of 4

As the Cherokee Nation stated in its prior letter, the largest variance from a per capita distribution for the states was by a factor of single digits. The modifications that have been proposed by the Trustee will massively increase the per capita share of smaller tribes at the expense of the per capita share of larger tribes, resulting in a variance from a per capita distribution by a factor of several hundreds. Under the proposed material modifications, the Trustee will distribute more money to the smallest 7 tribes (total Appendix D-8 population of 473 people) than to the Nation (Appendix D-8 population of 125,440 people). There is no basis for providing more mitigation funds to those 473 people than to the Nation's population of 125,440. While the Cherokee Nation would support some such modifications despite their negative impacts, that drastic of a reduction was not what the Cherokee Nation relied on at the time it made its decision to waive certain rights and become a beneficiary.

If the United States maintains its current unwillingness to consider a minimum award approach, a per capita division between the alignment groups should be the very first step, before any division by tribe occurs. That would occur by clarifying that the very first step in the allocation process is that the Trustee shall allocate 51.52 percent of the available funding to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Further allocation would then occur within those three groups. This would at least ensure that the largest tribes are not splitting funds equally with the smallest tribes. It would also protect the smallest tribes from being crowded out by the largest tribes during a per capita calculation.

The Cherokee Nation also strongly objects to the Trustee characterizing the United Keetoowah Band of Cherokee Indians in Oklahoma as a tribe 'aligned to a single geographic area' in Appendix D-8, and its inclusion as a Group 3 tribe. The United Keetoowah Band is a federally-recognized band of Cherokee Indians that is headquartered within the Cherokee Nation's OSTA, but they do not exercise governmental authority over any lands within the OSTA. There has been substantial litigation over this issue historically, and there is litigation pending in the Tenth Circuit Court of Appeals. Cherokee Nation v. Zinke, No. 17-7042 (Tenth Cir. filed Feb. 2, 2018). The relationships between tribes within the United States is complex, and rooted in history, treaties and case law unique to the tribes and lands belonging to those tribes. The Trustee brushes all such issues aside in Appendix D-8 and makes sweeping decisions about issues that are legally and factually complex. Appendix D-8 should be amended to reflect the United Keetoowah Band is unaffiliated with the Cherokee OSTA, and is a Group 1 tribe.

Thank you for your consideration of the Cherokee Nation's comments. Please do not hesitate to contact me with any questions.

Sincerely,



Sara E. Hill
Secretary of Natural Resources
Cherokee Nation

Attachments

cc: Volkswagen Diesel Emissions

July 23, 2018

Page 4 of 4

Environmental Mitigation Trust for
Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
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Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

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Secretary of Natural Resources

2 CHRISSE NIMMO (OK 22248) (*Pro Hac Vice* Admission pending)

3 Deputy Attorney General

CHEROKEE NATION

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Lafayette, CA, 94549

10 Phone: 925-284-0840

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Email: jpanitchpakdi@hgnlaw.com

12 *Attorneys for Indian Trust Agreement Beneficiary Cherokee Nation*

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 IN RE: VOLKSWAGEN "CLEAN DIESEL"
17 MARKETING, SALES PRACTICES, AND
18 PRODUCTS LIABILITY LITIGATION

) MDL No. 2672 CRB (JSC)

)

) **DECLARATION OF BRUCE C.**

) **BUCKHEIT IN SUPPORT OF**

) **CHEROKEE NATION'S MOTION TO**

) **LIFT STAY OF FIRST YEAR**

) **DEADLINES UNDER THE INDIAN**

) **TRUST AGREEMENT**

19 _____)
20 This Document Relates to:)

21 *United States v. Volkswagen AG et al.*,)
22 Case No. 16-cv-295 (N.D. Cal.))

) Date: To be determined

) Time: To be determined

23 Courtroom 6, 17th Floor

24 The Honorable Charles R. Breyer

Consent Decree in this case. During my tenure, EPA and the Department of Justice (DOJ) discovered quite massive defeat device violations by a group manufacturers of heavy duty diesel engines. I served as lead EPA negotiator in the settlements that arose from that matter and was fully involved in developing the mitigation measures in those consent decrees. A fuller resume is attached.

I was recently approached by representatives of the Cherokee Nation and asked to review the VW Settlement documents in this case, the trust agreement and related correspondence and provide my thoughts on the issues raised therein. As I reviewed section 5.0.5.2.3 of Appendix D, I was struck by the inference that the drafters seemed to think that the Indian Lands Trust Fund (Fund) would not likely be fully subscribed. This was initially puzzling given the notoriety of the issue over the past several years. When I reached the list of Qualifying Projects in Attachment D-2, I understood why the drafters might have thought the Fund would not be fully subscribed. Most of the projects on that list are “Big State” projects that California, New York and others might consider a priority and have the resources to engage in. There are few projects that smaller entities have either a desire for, need for or an ability to engage in.

The Trustee rightly observes that under the current allocation formula many tribes would receive an insufficient allocation to fund an Eligible Mitigation Action. The per capita allocation formula in the original trust document, with a minor modification as described below, is the appropriate allocation formula. No reasonable reallocation would solve the problem identified by the Trustee, and still meet the fundamental purpose of the trust to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated, especially if additional Tribes elect to participate in future cycles.

The problem identified by the Trustee is not with the basic per capita allocation formula, but with the unnecessarily narrow constraint on Eligible Mitigation Projects. While the Appendix D-2 list may reflect the preferences of the EPA and California engineers there is no reason why the list need be so constrained to projects involving airports, port facilities, tugboats, ocean going vessels and other large-scale projects that are too expensive for small Tribes to underwrite, irrelevant on Indian Lands and which do not address the impacts on or needs of those communities. I rather suspect that the drafters were focused on the larger issues of Federal and California enforcement priorities and the State Mitigation Action Trust Allocation and simply failed to consider whether the Appendix D-2 list made sense for Tribes, large or small.

I believe the appropriate course of action is to make two minor modifications to the per capita allocation and process provisions of the Trust and direct EPA to work with the Tribes to develop a more expansive list of eligible mitigation projects that will mitigate the harm from the violations in a more effective and useful way. If this recommendation is adopted, I envision that it might take several months for the large number of parties to agree on the broader list. However, under this approach, the revisions to the allocation and process provisions could be made in the near term and allow those Tribes who wish to go forward with projects on the current list to do so while a broader list is developed.

ALLOCATION ISSUES

The purpose of the Indian Lands Trust is to timely and efficiently fund Eligible Mitigation Actions, where those projects occur is subject to **the overarching purpose of mitigating NOx where the illegal VWs were, are, or will be operated.**

Whereas, the Defendants are required to establish this Indian Tribe Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) **where the Subject Vehicles were, are, or will be operated** (“Eligible Mitigation Actions”), and to pay for Trust Administration Costs as set forth in this Indian Tribe Trust Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe Trust Agreement and the State Trust Agreement is intended to **fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated[.]**”

Tribes do not drive VWs, but some tribal residents do. Tribes are not subject to asthma, heart disease and other adverse health impacts from unlawful NOx emissions, but some tribal residents are. For many years environmental managers have used population as a proxy for estimating mobile source emissions. In the absence of vehicle registration data or any information indicating that members of certain tribes have a particular affinity for this particular class of Volkswagens, population is the most direct, indeed, the only way, of objectively determining **where the illegal VWs were, are, or will be operated.**

The subject VW population is a very small fraction of the overall number of motor vehicles in operation in this country (approximately 0.2 percent). And so, the probability that any of the subject VWs were, are or will be operated on very small tribal reservations to any meaningful degree is quite small. For this reason, substantially reducing the available mitigation for members of large Tribes where there is a likelihood of VW operation in the past and in the future to overcompensate the few residents of small Tribes where such operation has been and is relatively unlikely is inconsistent with the purposes of the Trust. The notion that one member of a tribe is not entitled to the same degree of mitigation as a member of another tribe based on such political concerns is unfair and offensive. I do not suggest that the representatives of the smaller Tribes intend such an outcome. Rather, I assign responsibility for the present state of affairs on

the overly restrictive list of eligible projects that forces small Tribes to seek a large allocation simply to be able to participate at all.

Section 105 of the CAA sets out a grant program for funding state and local air pollution control activities, that is largely based on population, but includes two other factors – the severity of the air pollution problem and the financial need of the participating agency. At EPA the process of awarding these grants was conducted by other offices, but as the National Program Manager for civil CAA enforcement I regularly engaged in conversations with EPA Regional personnel and with the State and Local air regulators since section 105 grants included enforcement obligations. There were, of course, common concerns with funding levels, which were largely determined by Congress in establishing EPA’s budget. But there were also a large number of complaints about what was viewed as the complexity of the process in general, including competing state and local claims regarding section 105’s “other” criteria, since population is a given.

In the course of preparing this declaration I consulted with four individuals - Mr. S. William Becker¹, former Executive Director of the National Association of Clean Air Administrators (the professional association of state and local air program managers) and three former state air program managers. Each of these experts has spent decades on the “receiving end” of the 105 Grant process. I explained the issues and alternatives under consideration in this matter and each of these experts endorsed my incoming view that (1) the appropriate allocation formula should be based on a per capita formula, (2) any allocation scheme that deviated significantly from a per capita allocation would be unworkable and (3) the list of projects in

¹ Mr. Becker specifically authorized me to convey his view to the Court.

Appendix D-2 was too narrow, was of limited use to small agencies and was the cause of the problem.

The APPENDIX D-2 PROJECTS

I anticipate that some may respond that a more flexible list of projects should be rejected because the current D-2 list represents the gold standard, the “best of the best” projects that are potentially available. Appendix D-2 is not, in my view, an attempt to set out a comprehensive list of low-cost effective mitigation projects. Rather, the D-2 list appears to be an attempt to constrain funding options to a group of known large mobile source emitters that are of use to the larger states and leaves the issue of identifying the most cost-effective projects within those groups to the States and the few large Tribes whose allocations are sufficient to meaningfully participate in those types of projects. The heavy-duty diesel settlements “consumed” many of the best available mobile source mitigation options and there are no perfect options. The recommendations that follow should not be viewed as suggesting that the Appendix D-2 projects should be eliminated. Rather, the recommendations illustrate that there are a number of valuable projects that can be implemented by smaller Tribes within a reasonable allocation that have not been explored and that can resolve the allocation issue raised by the Trustee and the Court.

RECOMMENDATIONS:

The Trustee and the Court have indicated that those who submit acceptable proposals should receive a sufficient allocation to fund at least some qualifying project. And yet, with the current list of relatively large projects, no reasonable reallocation of Trust Assets would permit all of the several hundred small and mid-sized Tribes to participate now or in future years. The

State Trust funds amount to approximately \$9 per capita (with additional funds for the ZEV program); while the Indian Lands Trust is slightly larger at \$11 per capita (with the potential, but not the right to participate in ZEV program funding). First year funding is one-tenth of these amounts. And so, a tribe of 250 members might expect to receive an initial “population based” allocation of several hundred dollars – an amount that is not worth pursuing, given the administrative cost of applying for a grant. Even with a per capita multiplier of 5 or 10, such a tribe would not have a meaningful opportunity to participate in the program with the current list eligible projects. I recommend the following modifications to address this shortcoming and give effect to the goals of the Consent Decree.

1. Minimum Grant. If one of the goals of the program is to provide a meaningful opportunity for all persons on Tribal Lands to receive some degree of mitigation, a minimum grant, simply to cover the administrative costs of applying for a grant and any associated documentation, is needed. With some 567 tribes potentially involved, however, this minimum grant should not be so large as to materially impact the per capita distribution of funds that is the most equitable approach. With the streamlined process for small grants I recommend below, this grant need not be larger than \$1000, but could be slightly larger if needed to achieve resolution of the matter.

2. Streamlined Small Grant. To avoid high overhead expenses associated with retaining consultants or others to prepare a “plan”, grants under a certain dollar amount could be awarded on the basis of selection of one or more projects identified in the revised eligible project list, rather than by way of submission of a plan. Grantees would be subject to random audit by the Trustee, but would not be required to submit documentation other than a one-time certification

by a Tribal official that the funds have been spent in accordance with Trust requirements and conditions.

3. Multi-year Approval. Tribes, especially small Tribes, need not submit new applications each year if the choice of project is unchanged. Once approved, Tribes would be advised by the Trustee at the beginning of each year of the allocation available based on the funds available and the number of participants in a given year.

4. Revised Eligible Project List. The Department of Justice received several thousand comments on the proposed Consent Decree. It is a near certainty that many of those comments provided reasonable suggestions on potential eligible projects but, rather than risk upsetting the entire settlement, the governments did not incorporate those comments in the D-2 list. ***However, developing a list of projects that can be implemented by small and large Tribes is the key to resolving the problem identified by the Trustee.*** Even very small Tribes can participate meaningfully if all that is required to do so (in addition to the standardized release of claims and other legal requirements for participation) is a letter request or two-page application for one or more small dollar projects that they are familiar with, see value in and can reasonably implement. The fundamental inadequacy of the D-2 list is most vividly demonstrated by the fact that more than 95% of Tribes did not even apply for a grant, leaving the members of those Tribes without any remediation for Volkswagen's unlawful emissions. As I explain below, there is nothing in EPA policy or the applicable law on injunctive relief that requires the list of eligible projects be as constrained as it is in Exhibit D-2.

The following discussion is intended to be illustrative of the type of alternate options that could be considered in addition to the current D-2 list of eligible projects. I anticipate that the

Tribes have many useful and effective options that are not listed here and that should be explored. Additionally, since it is likely that many of the comments on the Decree set out useful and creative suggestions for Eligible Projects, it would be helpful if DOJ would prepare a spreadsheet setting out the suggestions that have been made to date.

EXAMPLES OF POTENTIAL ELIGIBLE MITIGATION PROJECTS

1. Heavy Duty Diesel NO_x Control – Tampering Enforcement

Most of the large heavy-duty diesel engines (HDDE) sold over the past decade are equipped with selective catalytic reduction (SCR) that substantially reduces their otherwise very large NO_x emissions. However, the SCR system requires the addition of an aqueous urea solution, commonly known as “diesel exhaust fluid” or “DEF” on an ongoing basis in order to function. In an attempt to ensure that DEF is added as needed engine manufacturers are required to incorporate systems to degrade operating performance if DEF is not available. However, these software-based systems are susceptible to tampering. Tampering is the term generally used to describe activities, such as substituting short pipes for the catalytic converters on passenger motor vehicles, that interfere with or disable the pollution control system.

As long haul HDDE trucks accumulate too many highway miles many of these vehicles are placed in local short haul activities, similar to those set out Attachment D-2. As these vehicles age the potential for tampering increases and the likelihood of detection by authorities decreases. Detection and correction of even one or two in-service HDDE engines that has been tampered would provide at least as large a NO_x emission reduction as replacing a 2009 school bus with a 2018 school bus, and at far lower cost.

For much less than the cost of replacing even one engine under an Appendix D-2 project, Tribal authorities can purchase the scan tools and training needed to detect such tampering. On road vehicle testing equipment such as the ROVERTM and similar commercial systems cost about the same as a single engine replacement and provide the capability for Tribal officials to test emissions of trucks on the road under normal driving conditions to identify high emitting HDDE (and other) vehicles for either enforcement or maintenance support as described in the next section.

2. Diesel Maintenance Support

Financial support for enhanced maintenance activities of existing vehicles also requires far less initial capital investment, is scalable and is more cost effective than replacing vehicles and engines that, with proper maintenance, would emit at substantially lower levels. A program of subsidized periodic diagnostic inspections and replacement of failed SCR systems, PM traps, worn fuel injectors and even engine rebuilds where those engines are or will be operated would seem to be of value to most Tribes. It would also be more cost effective (in terms of reducing NOx and otherwise) than drilling a three-inch hole in an otherwise serviceable engine block and purchasing an entirely new engine (which may not be certified to a lower NOx emission rate than the engine it replaces), as set out in Attachment D-2.

It should be noted that this program could include off road diesel-powered equipment, such as tractors and other agricultural equipment used on reservations. This program could also provide free DEF with any fuel fill at any Truck Stops on reservations to encourage the use of DEF and discourage tampering. Portions of this suggestion may be available under Attachment D-2 DERA option, but with greater administrative burden. To the extent that they are,

clarification of the extent of currently available maintenance activities under DERA and expansion to include the full scope of this suggestion should be undertaken.

3. Two-Cycle Engine Replacement

Two cycle engines, such as those used in many lawn service applications, are notoriously high emitters of PM and hydrocarbons. Those excess hydrocarbons react with the excess NO_x from the subject engines form the ozone that causes lung related damage, thus exacerbating the harm from the VW NO_x emissions. A decade ago small, lightweight lithium battery-powered lawn mowers, string trimmers, and chain saws suitable for light use in residential applications were introduced into the market. More recently, these designs have been upgraded so as to meet the needs of commercial users. If adopted, this program would provide a partial subsidy of a couple of hundred dollars per unit toward the purchase of electric lawn maintenance equipment for commercial users who trade in (and scrap) two-cycle lawn maintenance equipment. The limitation to commercial users is intended to ensure that the program maximize benefits by focusing on high use applications. This program is also intended to leverage the initial investment by demonstrating the benefits of this new technology throughout the industry.

4. Genset Replacement

Similarly, small gasoline or diesel gensets, especially older units, are often used for intermittent backup generation and are relatively high emitters. Rather than replacing these units with new gasoline or diesel units, this program would provide a subsidy toward the purchase of battery storage of electricity for intermittent use gensets that are scrapped. To maximize the effectiveness of this program, the subsidy would be limited to those units that have been operated

greater than some nominal amount (500 hours?) in a typical year. Per unit subsidies would nominally be in the range of 30-50 percent of the cost of a battery system. The overall cost is scalable, depending on the amount of backup power needed at a particular location. Again, this program seeks to leverage the initial investment by demonstrating the benefits of this technology to the members of the Tribe and others.

5. Solar/Wind Power Water Pumps

This program would subsidize renewable-powered water pumps in agricultural applications where the applicant agrees to scrap existing gasoline or diesel-powered pumps. There are a number of programs by international aid agencies that have demonstrated the cost-effectiveness of small solar powered water pumps in remote settings.

6. NO_x Allowance Retirement

A number of states have NO_x trading schemes based on the issuance of allowances that, when held by a source authorize the emission of (typically) at ton of NO_x. Purchasing and retiring such allowances may be an extremely cost-effective means of reducing NO_x within a system for those who elect to do so.

7. Support for Health Care Clinics on Reservations

The adverse health effects of exposure to direct PM emissions and the PM_{2.5} and ozone that result from the exposure to NO_x and PM emissions from diesel engines are well known. Support for health care for residents of Indian lands may be the most direct and cost-effective means of addressing the adverse impacts of VW's violations. This concept is entirely scalable

and with minimal administrative cost as a tribe may decide to apply its entire allocation for this purpose. Note that under applicable law and DOJ policy adopting this approach does not have to suggest any direct link between emissions from diesel-powered VWs and the health issues of any individual.

8. Revise Restriction on ZEV Participation for Tribes That Do Not Receive a State ZEV Grant

The D-2 list constrains ZEV program participation to 15 percent of the total allocation to a beneficiary, presumably because there is a substantial sum dedicated to state ZEV programs. While Tribes are eligible to participate in a state's ZEV program, there is no certainty that an award will be made to each Tribe that would seek to participate. Given the high value and leverage associated with this program, this constrain should be waived for Tribes that have unsuccessfully sought a state ZEV grant.

EPA REMEDIATION POLICIES

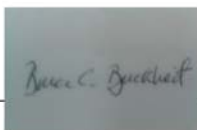
To my knowledge EPA's most recent policy statement on securing mitigation in civil enforcement settlements is found in the November 14, 2012, memorandum from the Director of the Office of Civil Enforcement to Addresses.² As one might expect, that policy notes that mitigation derives from the Court's general injunctive powers, and is intended to remedy, reduce or offset past harm, including actions that address the impacts on human health, wildlife, or the environment from the excess emissions. While the policy makes clear that there needs to be a nexus between the mitigation action and the harm, there is nothing in EPA policy or the applicable law referenced therein that says that actions to mitigate the harm from the excess VW emissions should be limited to the narrow list of projects in Appendix D-2. Nor is there anything

² Attached as Exhibit 2.

in EPA's policy or applicable law that suggests that mitigation of the harm from VW's excess emissions must come by way of reducing emissions from mobile sources.

PURSUANT TO 28 § U.S.C. § 1746, I hereby declare under penalty of perjury under laws of the United States of America that the foregoing is true and correct.

Executed on this 15th day of June, 2018.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Bruce C. Buckheit".

Bruce C. Buckheit

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BRUCE C. BUCKHEIT

EXPERIENCE

2004 – present

Energy and Environment Consultant

Fairfax, VA

- Provide technical and strategic advice to a broad range of U.S. agencies, corporations, state organizations and environmental groups.
- Provided technical and policy support on achievable greenhouse emission levels levels for new and existing coal and natural gas-fired electric generating units.
- Analyzed energy demand in Kosovo and prepared a report providing advice concerning the most cost effective and environmentally protective solution for that country's energy needs.
- Provided technical and policy advice and draft comments concerning U.S. Clean Air Act regulations governing nonconventional oil and gas exploration and processing and on greenhouse gas emission standards for new and existing fossil fuel-fired electric generating units.
- Provided technical and policy support respecting a voluntary industry-NGO model nonconventional natural gas practices program (the Institute for Gas Drilling Excellence), including a special focus on fugitive emissions.
- Provided technical and policy support to NGO participants at the 2014 South East Asia Coal Conference
- Identified legal and regulatory barriers to the development of wind power in the mid-Atlantic states under subcontract to US Department of Energy.
- Under contract supported by USAID, provided regulatory and policy advice to the Republic of Armenia concerning development of wind power resources, including development of an improved Armenian Model Wind Power Purchase Agreement.
- Provided technical support to a client concerning the ability of new supercritical pulverized coal plants in India to generate certified emission reductions under the Kyoto Protocol.
- Provided testimony before the Federal Energy Regulatory Commission concerning potential adverse environmental impacts associated with proposed regulations concerning demand side management (“net metering”) tariff issues in New England.
- Other major projects include technical and policy support for renewable energy deployment, innovative policies for reducing pollution from diesel trucks, evaluating impacts of Federal law on mercury deposition in the Chesapeake Bay, preparing testimony respecting proposed climate change legislation, and developing a model rule for control of hazardous air pollutants by states and a model rule to address interstate transport of pollutants.
- Provided analysis and comment on on U.S. Exim Bank, World Bank and other international lending agency policies for support of fossil fuel-fired generation, analysis of economic risk associated with reliance on imports of international steam coal for generation and country-specific issues in Armenia, Kosovo, Turkey, Viet Nam, Japan, Israel, India, Myanmar and Indonesia.

2006 –2010

Member, Virginia Air Pollution Control Board Richmond, VA

- Seven member Board, appointed by the Governor of Virginia to oversee Department of Environmental Quality implementation of state and federal clean air laws.
- Developed MACT (hazardous air pollution) and New Source Review permits for the first new coal-fired electric generating facility to be permitted in the nation after the vacatur of EPA's mercury rules.

1996 – 2003

Director, Air Enforcement Division, USEPA Washington, D.C.

- National program manager for enforcement of the Clean Air Act. Member, Senior Executive Service.
- Coordinated Federal – state enforcement policy with state and local air program managers and developed sensible new Federal regulations.
- Prosecuted violations that reduced air pollution by millions of tons, including “defeat device” CAA violations by major manufacturers of heavy duty diesel trucks and New Source Review CAA violations by coal-fired electric generating units.

1984 – 1996

Senior Counsel, Environmental Enforcement Section, USDOJ Washington, D.C.

- Responsible for development and prosecution of the most significant violations of Federal environmental statutes, including major Clean Air Act violations by General Motors (Cadillac defeat device matter), Bethlehem Steel, US Steel and Louisiana Pacific Corporation, as well as major Clean Water Act, RCRA and Superfund matters.
- Responsibilities included serving as lead Federal representative in a number of politically sensitive multi-jurisdictional environmental issues.

1974 - 1984

Counsel, Office of Chief Counsel National Highway Traffic Safety Admin.
Washington, D.C.

- Administration and enforcement of Federal laws respecting motor vehicle safety. Enforced Federal safety standards and recall provisions respecting motor vehicle safety defects.
- Drafted Federal regulation establishing testing and enforcement provisions for fuel economy standards for mobile sources.

EDUCATION

- 1969, B.S. (Physics) Manhattan College, New York, NY
- 1971, M.S. (Physics) College of William & Mary, Williamsburg, VA
- 1974, J.D. (Law) College of William & Mary, Williamsburg, VA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 14 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Securing Mitigation as Injunctive Relief in Certain Civil Enforcement Settlements
(2nd edition)

FROM: Susan Shinkman, Director
Office of Civil Enforcement *[Signature]*

TO: Regional Counsels
Regional Enforcement Division Directors
Regional Enforcement Coordinators
Office of Civil Enforcement Division Directors

A. PURPOSE

To ensure that EPA's environmental enforcement efforts not only correct and deter illegal conduct but maximize the redress of its consequences, this memorandum is intended to strongly encourage case teams to seek mitigation, where appropriate, as a component of the injunctive relief they seek in civil judicial enforcement cases.¹ An analysis of whether mitigation is appropriate should be a key part of case development. Where case teams determine it is appropriate, they should develop evidence to support its pursuit, in settlement and in cases that ultimately proceed to trial.

To aid case teams, this memorandum provides a definition of mitigation and guidance for use in determining when mitigation is an appropriate and desirable remedy and how to negotiate its terms. It also discusses the legal bases for mitigation and clarifies the differences between mitigation and Supplemental Environmental Projects (SEPs).²

B. INTRODUCTION

In settlement of certain civil environmental enforcement cases,³ consent decrees negotiated by EPA and Department of Justice (DOJ) typically include injunctive relief obligations to ensure that defendants'

¹ This memorandum and any internal procedures adopted for its implementation are intended solely for employees of EPA, do not constitute Agency rulemaking, and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this memorandum and its internal implementing procedures.

² SEPs are environmentally beneficial projects that a defendant agrees to undertake in the settlement of an enforcement action, but which the defendant is not otherwise legally required to perform. EPA's inclusion of SEPs in enforcement settlements is governed by EPA's Final Supplemental Environmental Projects Policy, effective May 1, 1998 (EPA Final SEP Policy).

³ This memorandum is not meant to address mitigation with respect to or to alter EPA's current practice under the following authorities: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601-9675; the Resource Conservation and Recovery Act (RCRA) Section 3008(h), 42 U.S.C. § 6928(h); RCRA Section 7003, 42 U.S.C. § 6973; RCRA Section 9003(h), 42 U.S.C. § 6991b(h); Clean Water Act (CWA) Sections 311(c) and 311(e), 33

future operations are in compliance with the law. Such relief is often in the form of physical improvements and/or operational changes at a facility that will ensure prospective compliance with applicable requirements, such as air emission or wastewater discharge limits.

However, at least one other form of injunctive relief is available to the government under appropriate circumstances: relief requiring a defendant to remedy, reduce or offset harm caused by past or ongoing violations. This relief is often referred to as “mitigation” or “mitigation actions.”⁴ This memorandum focuses on the most common cases in which mitigation should be considered to address harm to human health or the environment caused by excess emission or unauthorized/noncompliant discharge violations.⁵

Although mitigation is rooted in the same injunctive power from which courts derive their authority to order future compliance, mitigation is fundamentally different. Mitigation is not focused on preventing future violations and does not require proof that a defendant is currently violating the law. Rather, mitigation is intended to redress harm. As discussed below, the government’s entitlement to this relief flows from the inherently broad equitable authority of the district courts, and it is supported by federal case law interpreting the statutory authorities in the environmental statutes that EPA enforces.⁶

WHAT IS MITIGATION?

1. Definition

Mitigation is injunctive relief sought by the government to remedy, reduce or offset past (and in some cases ongoing) harm caused by the alleged violations in a particular case. As noted above, such harm is generally found where excess emissions or discharges harmed human health, wildlife or the environment. Mitigation is distinguishable from other injunctive relief obligations, such as those that ensure a defendant’s operations come into and remain in compliance with applicable laws and regulations. A mitigation action is one that provides identifiable benefits by accomplishing results such as the following:

- Cleaning up illegally emitted or discharged pollutants from the environmental media affected by the violation;
- Limiting the amount of future pollutants emitted or discharged (more stringently than legal limits) to address past excesses;

U.S.C. §§ 1321(c) and 1321(e); and CWA Section 404, 33 U.S.C. § 1344. Questions regarding CERCLA, these RCRA provisions, and CWA Section 311 should be directed to the Office of Site Remediation Enforcement and to the Office of Civil Enforcement as appropriate. For further discussion of CWA Section 404, see Section C.1 *infra*.

⁴ Over the last few years, several terms have been used to describe this type of injunctive relief. These terms include “mitigation project,” “mitigation action” or simply “mitigation.” To reduce the potential for confusion with Supplemental Environmental Projects (SEPs), this memorandum refers to such relief as “mitigation” and/or “mitigation actions,” but does not use the term “mitigation project.”

⁵ This guidance is intended to address mitigation in cases involving violations that result in excess emissions or unauthorized/noncompliant discharges. We recognize that mitigation may be appropriate in additional settings – such as cases involving violations that do not give rise to illegal emissions or discharges or cases involving environmental harm in the absence of violations (e.g., imminent and substantial endangerment cases). We reserve for future discussion the factors to consider in determining the propriety of mitigation in those additional settings. In the meantime, please contact the appropriate OECA office, either OSRE or OCE, if you have questions regarding mitigation in these contexts.

⁶ See Section D.

- Addressing the impacts on human health, wildlife or the environment from the excess emissions or unauthorized or noncompliant discharges related to the violation;⁷ or
- Monitoring designed to determine, and inform the community about, the level and extent of pollution emitted or discharged from a facility.

As noted in footnote 3, this memorandum is not intended to alter EPA's current practice under CWA Section 404, 33 U.S.C. § 1344, where the United States already routinely seeks restorative measures. Under CWA Section 404, EPA has long advocated that unauthorized or noncompliant discharges are continuing violations for which removal of the discharged pollutants is an appropriate injunctive remedy to bring a party into compliance.

In the CWA Section 404 context, injunctive relief aimed at remediating the specific harm caused by the violation is known as "restoration." In evaluating CWA Section 404 violations, wetlands enforcement staff consider the discharge's adverse impacts to determine whether on-site restoration is required. If a discharge would not have qualified for a Section 404 permit, EPA's preference is to require full on-site restoration for the impacts. If the discharge would have qualified for a full or partial permit, partial restoration with compensatory mitigation may be appropriate. Compensatory mitigation may also be appropriate when meaningful restoration is not a viable option. Additionally, such mitigation is sometimes sought in addition to full on-site restoration as compensation for temporal losses. Case teams enforcing CWA Section 404 should refer to the September 29, 1999, memo, "Injunctive Relief Requirements in Section 404 Enforcement Action," from Eric Schaeffer, Director of the Office of Civil Enforcement (the Schaeffer memo), rather than this memorandum, for specific guidance regarding injunctive relief in the Section 404 context.⁸

2. How Mitigation Differs from SEPs

There are three significant differences between mitigation actions and SEPs: the legal bases for EPA's ability to include one or the other in settlement; the requirements for nexus to the underlying violations; and the impacts on the size of civil penalties. Case teams should remain mindful of these key differences.

First, mitigation is action the government believes a court could order as injunctive relief if a case were litigated, and that the United States would be prepared to seek in court if the defendant were unwilling to settle the case. EPA's ability to obtain mitigation in settlement is based on the likelihood that, in litigation, the United States could establish mitigation was needed to redress past or ongoing harm to the environment and public health. A SEP, on the other hand, is a voluntary project that results from negotiation between the parties and cannot be secured outside the settlement context. As voluntary

⁷ For example, to address the impacts of Clean Water Act violations resulting in loss of fish, a mitigation action might provide for the restocking of fish in the water body.

⁸ The Schaeffer Memo emphasizes EPA's preference for on-site restoration of impacts that would not have qualified for a Section 404 permit, and notes that, "the complete restoration of such waters should be sought except in limited circumstances . . ." The memo defines those circumstances in which mitigation in lieu of on-site restoration may be considered, including circumstances: "(1) where substantial or meaningful restoration is not ecologically possible or when restoration attempts may cause more ecological harm than compensatory mitigation . . . (2) when there is no practicable way to require restoration . . . and (3) where the property is now owned by a good-faith purchaser and the equities strongly favor allowing the new owner to retain the fill." It also notes that "the 'temporal loss' of a functioning system must be compensated."

projects, SEPs, and the reduced civil penalty demand associated with them, are within EPA's prosecutorial discretion so long as each SEP approved by EPA comports with the SEP Policy.

Second, since the purpose of mitigation is to, as nearly as possible, restore the *status quo ante*, there must be a closer connection between a mitigation action and the harm it redresses than the nexus required by the SEP Policy. For example, in a case involving illegal sulfur dioxide emissions, an appropriate mitigation action could aim to reduce sulfur dioxide emissions (or sulfur dioxide precursors) below legal limits to offset the past illegal excess emissions. SEPs, on the other hand, are aimed at achieving more broadly-defined environmental or public health benefits, and are not solely limited to redressing the specific harm caused by the violations. Under the SEP Policy, nexus also exists where the proposed project is designed to reduce the overall likelihood that similar violations will occur and/or where the overall risk to public health or the environment potentially affected by the violation is reduced. EPA Final SEP Policy at C.1. Thus, while there must be a nexus between the violations and any SEP, the nexus need not be as direct as that required by mitigation.

Using the illegal sulfur dioxide emissions example, a SEP might provide focused monitoring stations at a facility's perimeter to help inform the public of the facility's emissions.⁹ Importantly, because they are not aimed at ameliorating a specific impact, SEPs are potentially available in almost any type of case, especially where it is more challenging to identify a specific redressable harm or the relevant statute does not provide adequate injunctive authority.

Third, unlike an agreement to perform a SEP, a defendant's agreement to perform mitigation does not entitle it to a civil penalty reduction. Of course, in any settlement, the government must evaluate all of the defendant's commitments in light of the government's litigation risks. Accordingly, a defendant's agreement to perform mitigation may factor into the government's analysis of whether a particular civil penalty is one the government should accept.¹⁰

As a result of these three key differences between mitigation and SEPs, the same action should never be considered both a mitigation action and a SEP in the same case. A mitigation action must be one the case team believes a court would be willing to order the defendant to perform if the case were litigated to redress the specific harm caused by the violations. The SEP Policy itself reflects this requirement, specifying that a project cannot qualify as a SEP where a particular project is one the case team believes the court could order as injunctive relief.¹¹

However, depending on the facts, the same type of activity could constitute mitigation in one case and a SEP in another. For example, a judge might order a defendant to provide diesel school bus retrofits as a mitigation action in a case involving excess emissions of the pollutants that would be reduced by the retrofits. In contrast, in a case involving failure to perform required testing for diesel-related pollutants in which EPA has no evidence of excess emissions that would require mitigation, the same retrofit project might be more appropriate, and more likely to be approved by a court in a settlement, as a SEP. In developing a settlement, case teams should not bypass consideration of whether a particular action is suitable as mitigation and proceed straight to consideration of the proposed action as a SEP simply

⁹ Of course, in a different case, a fence-line monitoring project such as this might be appropriate as mitigation rather than as a SEP.

¹⁰ See Section E.3. However, while litigation risks may factor into the analysis, the case team should not, for example, press for mitigation where it may not be warranted and then accept a reduced penalty because of the associated litigation risk. Mitigation should only be sought where it is warranted.

¹¹ See Final SEP Policy, Note 3.

because a defendant may be more willing to agree to perform the action due to potential penalty reduction. If an action is appropriate as mitigation in the case and the defendant does not agree to perform it as mitigation, then the case team must decide whether to litigate or settle without the action, but cannot simply obtain the same project as a SEP. This general rule does not preclude reconsideration of whether a project previously sought by the case team as mitigation is more appropriately considered as a SEP in cases when the reconsideration is prompted by some other changed circumstance (such as additional fact development at a later stage in the case). And, of course, where the case is not suitable for mitigation or where certain mitigation actions have already been included, the case team may consider whether other projects qualify as SEPs in accordance with EPA's SEP Policy. Case teams should never assume that because an action was acceptable as mitigation or a SEP in one case, it will be appropriate to treat it in the same way in another case with different facts or circumstances. Rather, potential mitigation actions should be evaluated on a case-by-case basis with a two-prong inquiry:

1. Is mitigation warranted in this case (*i.e.*, have the violations in this case resulted in harm that can be redressed) and would a court order such relief; and
2. Can this project be tailored to effectively redress the violations' harm?¹²

If the answer to both questions is yes, the case team should seek a project as mitigation. If the answer to either question is no, the case team should evaluate the project to determine if it meets the SEP Policy and could proceed as a SEP.

C. LEGAL BASES FOR MITIGATION ACTIONS

Mitigation derives from courts' authority to employ all equitable remedies necessary to achieve complete justice. This fundamental principle derives from the English common law tradition and is a long-standing element of American legal doctrine. Where the public interest is involved, a court's equitable authority is curtailed only by a clear signal from Congress. *See, e.g., United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 496 (2001) ("For several hundred years, courts of equity have enjoyed sound discretion to consider the necessities of the public interest when fashioning injunctive relief.") (internal citations and quotations omitted); *Franklin v. Gwinnett County Pub. Schools*, 503 U.S. 60, 66-67 (1992); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (Unless specifically curtailed by Congress, "all the inherent equitable powers of the District Court are available for the proper and complete exercise of [its equitable] jurisdiction.").

The language in various statutes that EPA enforces supports the argument that Congress did not intend to strip the courts of this equitable power. For example, the CAA states that a district court "shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief." 42 U.S.C. § 7413(b) (emphasis added). The CWA authorizes courts to "restrain" violations and "require compliance," while RCRA authorizes EPA to "commence a civil action in . . . district court . . . for appropriate relief" for violations of RCRA. *See* CWA Section 309(b), 33 U.S.C. § 1319(b) (2011) and RCRA Section 3008(a)(1), 42 U.S.C. 6928(a)(1) (2011).

¹² *See* Section E.1. for a more thorough discussion of whether mitigation is warranted and whether a proposed action is appropriate.

A number of courts have held that such language in the statutes EPA enforces authorizes mitigation in appropriate cases. *See, e.g., U.S. Pub. Interest Research Group v. Atlantic Salmon of Maine, LLC*, 339 F.3d 23, 31 (1st Cir. 2003) (court's equitable power to enforce the CWA includes power to provide remedies for past violations); *United States v. Deaton*, 332 F.3d 698, 714 (4th Cir. 2003) (holding that the district court has authority under the CWA to order "remediation" in federal enforcement actions); *United States v. Holtzman*, 762 F.2d 720, 724-25 (9th Cir. 1985) (holding that CAA grant of jurisdiction to "restrain violations" includes power to enjoin otherwise lawful activity where necessary and appropriate to correct or dissipate harmful effects of past violations); *United States v. Cinergy Corp.*, 582 F. Supp. 2d 1055 (S.D. Ind. 2008) (holding that Section 113 of the CAA authorizes mitigation);¹³ *United States v. Alcoa*, 98 F. Supp. 2d 1031, 1039 (N.D. Ind. 2000) (holding that CWA authority to "require compliance" is broad enough to include cleanup of contaminated sediments under certain circumstances); and *United States v. Outbound Marine Corp.*, 549 F. Supp. 1036 (N.D. Ill. 1982) (holding that CWA authorization for EPA to seek "appropriate relief" is broad enough to include clean up orders). Thus, mitigation is an important aspect of the relief that a court may order to ensure that a violation is restrained, compliance is achieved and the public interest is served.

D. NEGOTIATING MITIGATION

1. Considerations When Determining Whether Mitigation is Appropriate in a Given Case

Whether to seek mitigation and what sort of project is appropriate are fact-dependent inquiries to be made on a case-by-case basis. At a minimum, every case team must assess two threshold considerations when determining whether mitigation is appropriate for a particular case. Even then, additional considerations are relevant to deciding whether to pursue mitigation, and, if so, what sort of mitigation may be warranted.

a. Threshold Considerations

First, mitigation is an appropriate settlement component when a violation resulted in a harm that can be effectively redressed. As noted, such harm most often involves violations that resulted, or likely resulted, in excess emissions/discharges that affected human health or the environment. For example, the 2011 Tennessee Valley Authority (TVA) CAA settlement included \$350 million of tailored mitigation actions (reducing 30,000,000 tons of carbon dioxide emissions; 96,000 tons of sulfur dioxide emissions; 25,000 tons of nitrogen oxide emissions; and 800 pounds of mercury emissions) to provide redress for excess emissions from coal-fired units at nine TVA plants (TVA had not obtained required preconstruction permits and installed and operated the necessary pollution control technology).¹⁴

Second, the case team must consider whether there are mitigation actions that can be suitably tailored to effectively address the harm caused by the violations. Since states often have developed local projects

¹³ In *Cinergy*, the most recent case to examine the United States' authority to obtain mitigation as injunctive relief, the precise question presented was whether the equitable jurisdiction granted by the Clean Air Act "authorize[d] the district court to take actions to remedy, mitigate and offset the harm to public health and the environment cause by the established CAA violations." 582 F. Supp. 2d at 1058. The district court extensively analyzed the body of case law concerning federal courts' inherent equitable powers and their invocation or restriction by statute, with particular emphasis on the cases examining provisions of the CWA and CAA cited above. The court concluded, consistent with these cases, that the CAA's "equitable authority includes the granting of retrospective remedial relief." *Id.* at 1066.

¹⁴ Consent Agreement and Final Order Docket No. CAA-04-2010-1528(b). Additional details concerning this settlement are available at <http://www.epa.gov/compliance/resources/cases/civil/caa/tvacoal-fired.html>.

which could serve as effective mitigation actions in a particular case, case teams should consult with affected states whenever appropriate. Case teams should also recognize that a mitigation action need not completely redress the harm caused by the violation.¹⁵ For example, to partially mitigate the effects of acid rain resulting from excess emissions, EPA's settlement of CAA violations at Duke Energy's Gallagher Power Plant included a \$250,000 mitigation payment to the U.S. Forest Service for restoration at six downwind national forests injured by excess power plant emissions.¹⁶

b. Other Considerations

Other important factors that case teams should consider in determining whether and what mitigation to seek in a particular case include the extent of harm the violations caused; the characteristics of the impacted area and community; the potential for increased resource burdens in preparing the case, as well as those associated with monitoring compliance with the settlement; and an overall assessment of any litigation risk associated with pursuing the violations or the contemplated mitigation actions. This factor is discussed in detail in Section E.3.

The amount of illegal pollution and the severity of public health, environmental or other impacts should always be considered when deciding how critical it is to include mitigation in a particular settlement's injunctive relief package. Case teams should assess these facts in every case and avoid reliance on "rules of thumb" because the extent of harm in each specific case has a direct bearing on the need for mitigation and the likelihood of obtaining this sort of injunctive relief. Case teams should not seek mitigation that is out of proportion to the harm.

Notably, mitigation actions can play an important role in cases that raise environmental justice concerns because mitigation, by definition, addresses some of the harm caused by the violations and the concomitant burden associated with that harm. Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" acknowledges the concern that certain segments of the nation's population are disproportionately burdened by pollutant exposure. Requiring mitigation for communities with environmental justice concerns can help lessen the burden on people who spend time in, or depend on food and water sources near, the area where environmental violations occurred. Mitigation is also a way to address concerns about cumulative impacts; even if the illegal pollution from a particular violation may appear to have a small impact on the community, community overburden is an important factor to consider. Case teams should consider, given the nature of particular violations, whether mitigation designed to offset past impacts to environmental justice communities can be identified.

Case teams should also recognize that pursuing mitigation has the potential to create significant additional agency resource burdens, such as the need for expert opinions and more detailed analyses of environmental harm and/or public health effects, and can substantially increase the length and complexity of settlement discussions. It also has the potential to create post-settlement burdens associated with monitoring compliance during implementation. Each of these factors should be taken into account.

¹⁵ Across media, there are various methods and models used to quantify excess emissions and to estimate anticipated future reductions, and EPA is continually improving its approaches to such calculation. Case teams should rely on the best, most current methods applicable to the violations in a particular case and should consider consultation with EPA's program offices to ensure they are employing EPA's best tools.

¹⁶ *United States v. Cinergy Corp.*, Civil Action No. 1:99-cv-01693-LJM-JMS (S.D. Ind. 2009). For further information regarding this settlement, see <http://www.epa.gov/compliance/resources/decrees/civil/caa/dukeenergy-cd.pdf>.

Timing of Discussions

Mitigation should be discussed concurrently with all other elements of injunctive relief. Delaying discussion of mitigation actions until other injunctive relief is already negotiated permits a defendant to develop an expectation about compliance costs that may adversely affect its willingness to undertake mitigation without additional concessions from the government.

In addition, case teams should not begin to assess or discuss SEPs until later in negotiations – until the case team either identifies and pursues mitigation actions or determines that a case is not suitable for mitigation. Negotiating all of the injunctive relief, including mitigation actions, before consideration of SEPs helps to ensure that the case team appropriately differentiates mitigation actions from SEPs. As discussed above in Section C.2., what distinguishes a mitigation action from a SEP is not necessarily the kind of project, but the circumstances of the case.

3. Potential Effect on Penalties

As also discussed above in Section C.2., in general, a defendant's willingness to undertake mitigation does not justify a reduction in the civil penalty the government would otherwise demand in settlement. Mitigation is, by definition, work the government believes a defendant could be compelled to perform as a result of its violations, even in the absence of a settlement. A defendant's willingness to do what could be legally required does not entitle a defendant to penalty reduction, and case teams should not indicate that performing a mitigation action will lead to a reduced civil penalty.

Case teams should rely on EPA's penalty policies, which guide the proper exercise of EPA's enforcement discretion in arriving at an appropriate settlement penalty. The policies take into account many factors, including those specifically identified in the statutes. The CAA Stationary Source Penalty Policy, for example, provides for reductions in the gravity-based penalty based upon the degree of cooperation demonstrated by the defendant. Thus, a defendant's willingness, especially if demonstrated early in the negotiations, to perform certain mitigation actions as part of a settlement package might provide a rationale for some reduction in the gravity-based penalty.

However, as discussed in Section C.2., case teams must evaluate all of the defendant's commitments in light of the government's litigation risks. Even where a case team has determined that mitigation is warranted, a particular case may still present litigation risks, such as proving a defendant's underlying liability, persuading a court that it is within the court's equitable discretion to order mitigation, or proving a degree of harm that supports mitigation. Since litigation risk always factors into the government's analysis of whether a particular settlement package is in the government's interest, a case team may decide, in light of the risks, that other aspects of the settlement, including the mitigation action, are sufficiently important that it is willing to accept a smaller civil penalty in order to conclude the settlement and avoid those litigation risks.

4. Mitigation Action Settlement Terms

In consent decrees, mitigation actions should be addressed as part of the injunctive relief sections of the decree. To avoid unwarranted confusion with SEPs, care should be taken in drafting to avoid linking the performance of the mitigation action with any reduction or mitigation of civil penalties, and to use the terms "mitigation" and "mitigation action," rather than "mitigation project."

The consent decree should address mitigation consistently with other material terms of injunctive relief and include requirements such as: full completion of the mitigation action; a prohibition on netting

credits or offsets in CAA settlements; stipulated penalties; incorporation of terms into permits; and *force majeure* and similar provisions.

Finally, as with all settlements, the government should be mindful of fiscal law constraints that prohibit constructive receipt of funds by EPA or any other federal agency lacking statutory gift authority to accept donations of funds, goods or services,¹⁷ as well as ethics regulations that prohibit improperly endorsing or providing preferential benefits to particular firms.¹⁸ Under the settlement agreement, EPA may not play a role in managing or controlling the mitigation action; selecting, recommending, or exercising control over any third party contractor the defendant uses to carry out the action; or directing the funds used to provide the injunctive relief. Case teams may, however, review and approve the qualifications of contractors the defendant selects if they use transparent, objective criteria. In addition, to avoid any augmentation of government resources, the mitigation described in the consent decree cannot involve actions that are already the responsibility of a federal agency to perform.

For questions about this memorandum or examples of settlements that include mitigation, contact Beth Cavalier at (202) 564-3271 or Jeanne Duross at (202) 564-6595.

cc: Cynthia Giles, OECA
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Steven Chester, OECA
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Ken Patterson, OSRE
Karin Leff, OSRE
Bruce Gelber, DOJ
Ben Fisherow, DOJ
Karen Dworkin, DOJ
John Sither, DOJ

¹⁷ Compare *In re Olin Corporation*, 7 Op. O.L.C. 36 (1983) (holding that a settlement agreement requiring defendant to establish health care program as a form of injunctive relief did not violate the Miscellaneous Receipts Act (MRA), 31 U.S.C. 3302(b), where the government helped design the project, but did not designate the recipient of the project), with *In re Steuart Transportation Company*, 4B Op. O.L.C. 684 (1980) (holding that a settlement in which the government designated a third party recipient of settlement proceeds amounted to constructive receipt of the funds in violation of the MRA).

¹⁸ See Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, which prohibit the improper endorsement and conferral of preferential economic benefits to a particular firm in violation of the impartiality and misuse of position provisions contained therein.

Boyd I. Gourneau
Chairman



Tribal Administration
187 Oyate Circle
Lower Brule, SD 57548
Phone: (605) 473-5561
Fax: (605) 473-5554

June 22, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

To Whom It May Concern:

In response to the telephone discussion on May 21, 2018 regarding the oversubscribed VW Settlement funds, the Lower Brule Sioux Tribe of South Dakota respectfully asks that the following notes be reviewed and considered for the first and all subsequent rounds of funding. We appreciate the opportunity to submit our opinions and to weigh in on this important matter.

1. The Trust Agreement should reduce the number of funding cycles to FOUR or fewer. While this would intensify application-related work in the near term, it could result in an overall reduction of time and effort, minimize the need for banking, and put the Trust's funds to work sooner. All eligible 26 first-round projects should be funded in the first round based on dividing the total funding amount equally over the four rounds and dividing the first-round funds equally among the first 26 tribes. Any projects that don't require the full amount of their distribution will forfeit the remainder of the allotted amount and that amount will go back in to the pool of available funds to be redistributed toward other projects in the first and/or subsequent rounds.
2. The Trust Agreement should provide that all federally-recognized Tribes that have submitted a certification for beneficiary status form (Appendix D-3 of the Trust Agreement) and have been determined a Beneficiary can qualify for consideration for funding in the additional funding cycles by submitting a notice from its designated Lead Agency to the Trustee by the deadline for that funding cycle, stating that the Tribe wants to participate in the funding cycle.
3. IF the Trust Agreement should apply the following allocation formula for the oversubscribed first funding cycle: 50% of the available funding in the first funding cycle should be divided equally among the 26 Beneficiaries with an approvable funding request. The remaining funding shall be divided among the 26 Beneficiaries based on population, weighted in accordance with the total population living within each Indian Tribe's tribal area according to

the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas) (the "population-based formula").

4. The Trust Agreement should be modified to combine the first and second rounds of funding and distributions delayed until the date the trust is fully funded. The first and second funding rounds should only include the first 26 eligible tribes in recognition of timely participation and diligence, as well as providing the foundation and feedback to improve the program for future funding cycles. Furthermore, the first funding round has now been delayed nearly four months, and potentially could be another 5-6 months. The funds are or will be available to fund the initial 26 tribes' projects, and therefore some consideration should be given.
5. The Trust Agreement should be amended to require the Trustee to file its notice of Beneficiary designation on a date certain after the deadlines for the second through fifth funding cycles. The time for the United States to file any notice of objection would then follow 30 days after the Trustee's designation.

Lower Brule Sioux Tribe would like to recommend the following conceptual approaches for consideration:

1. Eliminate body replacement and focus on chassis or engine replacement only.

Provide separate body cost estimates for the vocational trucks, or those trucks that are built to perform a specific job function, such as refuse (trash) trucks, fuel and propane delivery, and service trucks. It is customary in the truck business to purchase truck chassis separately from the bodies since the body manufacturers are not the same manufacturers of the truck chassis. However, often the chassis manufacturer and/or dealer will work closely with the body manufacturer/dealer to assure the two separate components work together seamlessly.

It is important to note that without the two components working together, the truck isn't useful to the end user, and often in vocational applications, used bodies will not transfer effectively to new chassis and more importantly, the body, being the workhorse of the vehicle, is often in need of replacement before the chassis. Furthermore, tribal entities may find body replacement in certain applications such as refuse at nearly \$200,000 each to be cost prohibitive even if the new chassis are provided. At the same time, the purpose of these funds are to mitigate emissions from older diesel technology, which is accomplished by replacing the chassis and/or engine equipment, not the body. With limited available funds and more need than these funds can provide, it is crucial for distributions to maximize the benefit for which it is intended.

2. Reduce eligible model years of trucks and engines. Focus on pre-2007 and pre-Tier

3.

- a. Pre-emissions engines, models manufactured prior to 2007 that do not require emissions aftertreatment should be considered first. NOx and particulate matter emissions were greatly reduced through required emissions aftertreatment equipment, therefore much more effort should be focused on equipment manufactured without aftertreatment.

- b. Reduce eligibility of older truck/engine models. Rather than including models manufactured in 1992, consider eligible models manufactured in 1999 and higher. Many of those older trucks will go away on their own due to end of useful life. A 1992 model engine has been operating for 26 years, well beyond its intended useful life. Many of these engines have been rebuilt or overhauled and/or will not be expected to continue operating more than a few more years and in a limited capacity. It may also be important to exclude trucks with rebuilt, overhauled or replacement engines, specifically engine models that are older than 15 years.

For the LBST application, these changes would result in a reduction in equipment expenditure budget of \$1,046,500 for a total request equalling \$871,000 vs. the original \$1,917,500 budget. Furthermore, by reducing the eligible equipment expenditure, the 15% administrative budget cap would be reduced by \$156,975, resulting in an administrative budget cap of \$130,650 vs. \$287,625. Total savings to be distributed to other projects- \$1,203,475, approximately enough to replace 10 more trucks.

Thank you.



Boyd I. Gourneau, Chairman
Lower Brule Sioux Tribe

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN



July 23, 2018

VIA ELECTRONIC MAIL: pubcomment-ees.enrd@usdoj.gov
VIA FIRST CLASS MAIL

Chief, Environmental Enforcement Section
U.S. Department of Justice
ENRD Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Re: DJ # 90-5-2-1-11386

TO WHOM IT MAY CONCERN:

On behalf of the Pascua Yaqui Tribe, in Tucson, Arizona, I respectfully submit these comments on the Proposed Material Modifications to the VW Indian Tribe Trust Agreement, filed with the U.S. Federal District Court for the Northern District of California on June 21, 2018. In short, the Pascua Yaqui Tribe supports the apparent goal of clarifying the process for qualifying, applying, and obtaining funds from the VW Tribal Trust Settlement Account. This effort should provide more certainty for tribes over the next several years as they evaluate and determine whether to apply for funding to complete emission reduction activities and projects. However, the Tribe has several concerns about the proposed allocation formula, and basis for the population information, as it does not treat tribes fairly and equitably. We have the following specific comments:

Background of the Pascua Yaqui Tribe

The Tribe is headquartered on its reservation – approximately 2500 acres – which is located southwest of Tucson Arizona. We currently have almost 20,000 enrolled tribal members, approximately 4500 of whom live on the reservation. Because of our unique history, most of our tribal members live off of the reservation, but within recognized Yaqui communities, such as Guadalupe (in Phoenix) or Old Pascua (near downtown Tucson). The Tribe has over 11,222 tribal members who live in or near our recognized tribal communities of Guadalupe (3500 tribal members), Old Pascua (796 tribal members), Marana, Barrio Libre, Penjamo (Scottsdale), Eloy, High Town (Chandler). Our reservation is its own census tract, but our off-reservation communities are included in other census tracts. Thus, the American Indian/Alaska Native census does not accurately pick up our tribal members that live off the Yaqui reservation but in our Yaqui communities.

Process Changes

We support the change in the process to create several deadlines and milestones for filing the various documents necessary to qualify, express intent to apply, and apply for funding. We would, however, like a confirmation that the waiver included in the D-3 (Beneficiary

Certification) is not valid unless and until a tribe actually receives funding from the settlement fund.

Allocation

We also support the idea of “pre-allocating” the current cycle funding, based on expressed interest in funding, to ensure fair allocation of funds to avoid over-subscriptions. We are also not opposed to the specific allocation formula itself.

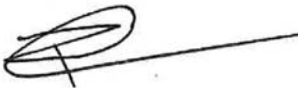
However, we are concerned that the census datasets used to determine tribal populations creates over-inclusive populations in Oklahoma, and under-inclusive populations for Pascua Yaqui and other tribes (such as the California tribes) that have large portions of their populations living off of reservation lands. This is because the Oklahoma census datasets clearly do not limit counting tribal population to Indian lands as the non-Oklahoma census datasets do.

As an example, Group 2 in your proposed grouping model includes 6 tribes – all in Oklahoma. Group 3 includes 4 tribes, 3 of which are in Oklahoma. Between these 9 Oklahoma tribes, they are effectively allocated 24.25% of all the VW tribal settlement funds (over \$13 million). And yet, the Oklahoma tribes have no reservation land base, and limited tribal trust lands. The populations ascribed to these tribes thus very clearly includes tribal members (or even non-tribal member Indians) who do not live on Indian lands. Furthermore, because the Oklahoma census datasets cover a wide geographic area, the datasets pick up more than just tribal members for the designated Indian tribes. Using the Oklahoma census dataset results in the inequitable treatment of similarly sized (by tribal member population) non-Oklahoma tribes like Pascua Yaqui.

We respectfully suggest that the allocation formula should use self-reported tribal member populations. The tribes’ self-reported information can be added to the D-3 form, so that the tribes are reporting this information, under oath, to the Court. This self-reported information can then be used in the allocation formula, as it’s currently designed. In our view, this is the only way to treat all tribes fairly.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Robert Valencia", with a long horizontal line extending to the right.

Robert Valencia
Chairman

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Putting Our People First”

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

July 23, 2018

Chief Thomas A. Mariani
Environmental Enforcement Section
United States Department of Justice – ENRD
Environmental Enforcement Section
Post Office Box 7611
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Re: Written comments prepared by the Gila River Indian Community regarding the Proposed Modifications to Volkswagen Settlement Trust Agreement.

Dear Chief Mariani,

The Gila River Indian Community (the “Community”) hereby respectfully submits the following comments regarding the Proposed Material Modification of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (“Proposed Modifications”).

I. Gila River Indian Community

The Community is a federally recognized Indian tribe composed of the Akimel O’Otham (Pima) and Pee-Posh (Maricopa) tribes. The total enrollment of the Community is approximately 20,000 members. The Gila River Indian Reservation (the “Reservation”) is located in southern Arizona and encompasses nearly 600 square miles in Pinal and Maricopa counties. The Community is both an urban and rural Community and shares a border with the cities of Phoenix, Chandler, Coolidge, Casa Grande, Gilbert, Maricopa, and Queen Creek.

II. Comments on the Proposed Modifications

On June 21, 2018, the Department of Justice (“DOJ”) issued a Notice of Proposed Material Modification of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian

Tribe Beneficiaries approved by the Court on September 19, 2017, *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 49. The Community recognizes the purpose of the settlement to fund specific actions to reduce the sources of nitrogen oxides emissions. In consideration of the need to develop methodologies that maximize emissions reduction, the Community strongly advocates for an allocation formula that grants additional funds for those tribes that are located in or adjacent to Ozone or PM2.5 nonattainment areas. It is evident that reducing emissions from diesel vehicles will have the most impact for tribes in or adjacent to these nonattainment areas, thereby fulfilling the explicitly stated purpose of the settlement.

As such, the Community proposes an alternate initial step at Section 5.0.5.3.2 for establishing the allocation formula, as follows:

Step 1: Statement of Proximity. Tribes may supply an addendum with a statement of proximity to a nonattainment area. Ten percent of the cycle total shall be reserved for distribution to tribes located on or adjacent to a nonattainment area. The amount of these funds shall be distributed to qualifying tribes based on a pro rata population-based distribution using the original formula (as further described at Step 2).

The Community disagrees that there should be separate submittal deadlines for the Designated Beneficiary's Participation Notice and the Beneficiary Eligible Mitigation Action ("EMA") Certification Form because this method may have the effect of diluting the pool of funding available to tribes with ready projects. Instead, the Community asserts that the EMA Certification Form should be included for each cycle according to the process outlined at Section 5.0.5.3.2. The Community believes the pro rata population-based distribution should also be followed for each cycle's remaining funds, with the incorporated method for notice of reallocation of the overage at Step 4. However, the Community opines that tribes should be allowed to opt to bank in the alternative to acceptance for use or to opt out of the extra funds (the latter of which will then be distributed to the proximate cycle). This allocation method will ensure that tribes get as much funding as can be used in each cycle.

Although not provided for in the Proposed Modifications, the Community remains in support of the option for tribes to bank funds. Even though there may be enough funding to complete a project, it may be the case that there is not enough funding to support administrative staff to assist with the implementation of that project. Banking funding will provide support for these additional and unanticipated project costs, especially for larger projects where this issue will likely pose the greatest challenge to implementation.

Regarding the proposed group division based on population at Section 5.0.5.3.1, the Community believes use of the 2010 United Census Table PCT4 to provide population statistics in order to further quantify population ranges should be replaced by tribal census data for on-reservation tribal members, and only respecting the specific tribe or band. However, the Community is in agreement with the Proposed Modifications at this Subsection to create three population groups.

The Community is also in agreement with the proposed standardized Designated Beneficiary's Participation Notice introduced at Section 2.1.2.2. as a prerequisite to qualify for consideration for funding beginning in the second funding cycle. Per Section 5.0.5.2, the Community is further in agreement with the reduction of funding cycles from five to four, with a fifth funding cycle to exhaust trust funds. Finally, the Community is in agreement with changing the deadline for participation in the second funding cycle from September 1, 2018 until December 1, 2018, as provided at Section 4.0.

III. Conclusion

The Community appreciates the steps taken by the Administration and Trustee to address the oversubscribed funding cycles as a result of the current process for distribution of the Trust Fund. However, the Community highly recommends adopting revisions in which the formula allocates ten percent of the cycle total funding to tribes that are located in or adjacent to nonattainment areas, including a requirement for tribes to submit a statement of proximity; calculation of the population ranges for the allocation formula using tribal census data for on-reservation tribal members that is specific to that tribe or band; extra funds in a given cycle reallocated according to the original formula to tribes with an appropriate mitigation plan, as well as a process for notification of extra funds; and a process for banking for additional and unanticipated project costs. Furthermore, the proposed amendments to the Trust Agreement, as presented for and at the third phone discussion, to create a standardized notice for qualification, a reduction in funding cycles, and for postponement of the second funding cycle deadline, as well as the Modifications proposal to create three population groups, will assist in making a more workable distribution of the Trust Fund.

The Community greatly supports the intent of this proposed amendment. Should you have any questions regarding the Community's comments, please contact our Law Office at 520-562-9779. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen R. Lewis', with a long horizontal flourish extending to the right.

Stephen R. Lewis, Governor
Gila River Indian Community

cc: Robert Stone, Lt. Governor
Linus Everling, General Counsel
Gila River Community Council Members (16)



COQUILLE INDIAN TRIBE

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Sent Via electronic mail to OTJ@usdoj.gov with attachment.

July 19, 2018

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

Re: Comments on the distribution of the VW Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

Dear Office of Tribal Justice:

Below are our comments on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.).

This letter emphasizes several points we want the DOJ to consider.

- The Allocation formula should be a 70/30 Split as this is common in other funding arrangements with Tribes for IHS and BIA funds. 70% divided equally between all applicants and 30% divided by population formula. Allocation funding should remain this way for all funding cycles. This methodology will result in a more equitable distribution among tribes.
- There should be a ceiling for the allocation of funds to a Tribe within one funding cycle. The funds will not go very far if a few Tribes receive multi-million dollar grants. Also, without a ceiling Tribes with large populations will be incentivized to request multimillion dollar fund requests. We feel the maximum amount to any one beneficiary should be in the \$500K range.
- The best way to avoid overallocation in any cycle is to cap the maximum amount of the funding request for all funding cycles. Multi-million dollar requests prevent smaller Tribes from receiving mitigation funds.
- We feel we should be allowed to bank our allocated amount to fulfill the intent of the mitigation. We would like the opportunity to opt to bank the allocated amount if there is not enough money to fund our full mitigation plan.
- We also believe all Tribes should be allowed to submit applications for funding over more than one funding cycle.

Thank you for taking the time to listen and incorporate our comments into the VW mitigation allocation method.

Shuenhalni,

A handwritten signature in blue ink that reads "Mark Johnston". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Johnston
Executive Director
Coquille Indian Tribe



Office of Native American Initiatives

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VIA ELECTRONIC MAIL: pubcomment-ees.enrd@usdoj.gov

23 July 2018

Chief, Environmental Enforcement Section
U.S. Department of Justice
ENRD Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Re: DJ # 90-5-2-1-11386

TO WHOM IT MAY CONCERN:

On behalf of the Arizona Board of Regents for and on behalf of Northern Arizona University, Institute for Tribal Environmental Professionals (ITEP), in Flagstaff, Arizona, I respectfully submit these comments on the Proposed Material Modifications to the VW Indian Tribe Trust Agreement, filed with the U.S. Federal District Court for the Northern District of California on June 21, 2018.

In short, the ITEP supports the apparent goal of clarifying the process and scope of work for providing technical assistance to the Tribes and Tribal Beneficiaries seeking to obtain funds from the VW Tribal Trust Settlement Account. However, ITEP has several concerns about the proposed additional provisions in the Agreement, which have been inserted without ITEP's knowledge, input, or consultation. ITEP's concerns are as follows:

Scope of Tasks Responsibilities for ITEP – New Section 2.1.1.2 and the Beneficiary Application Process

As a general matter ITEP is supportive of providing more clarity in the scope of technical assistance that ITEP should provide to Tribes and Tribal Beneficiaries and to create better expectations and understanding between ITEP and the Wilmington Trust (WT). However, as technical assistance provider, ITEP is concerned regarding the new timeline for tribal beneficiaries to develop their Appendix D-4 applications. ITEP is concerned that the 60-day deadline between the time the tribe is formally notified of their allocation, and when they are required to submit the Appendix D-4 forms is going to be challenging both for the tribes and for ITEP as technical assistance provider.

For tribes, the process is time consuming and arduous, especially for small tribes with limited staff. They first have to conduct inventories and determine what vehicles and equipment are eligible. Once they determine which vehicles / equipment are eligible, it will take them time to get quotes for vehicle/equipment replacement. They may also have to look for vendors that supply ZEV infrastructure such as charging stations. The cost for ZEV charging stations and installation are often in excess of \$25K, which requires the tribe to have quotes from vendors. Once all their equipment costs and contractual costs are solidified, they have to typically submit their plans for review and approval from tribal administration or the Tribal Council. This approval process is time consuming, especially with Tribal Councils, because the Councils typically only meet once per month. Each tribe has a different review and approval process, so it really can be challenging and time consuming. Once the tribe has their internal approvals, that's typically when ITEP will receive the D-4 applications for review. 60 days is simply not enough time for tribes to complete their Appendix D-4 application. In addition, according to the new proposed process, ITEP must to do a thorough review and provide a report to WT 3 to 5 days prior to the 60 day deadline, which cuts down the tribes time even more.



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ITEP strongly recommends to extend the time period for tribes to submit their D-4 applications from 60 days to 90 days. This extension could be completed by shortening the time period between steps 2 and 3 below to 30 days instead of 60 days. Or extending the D-4 application deadline from May 10 to June 10.

1. Trustee posts a notice pertaining to the second funding cycle on the Indian Tribe Trust's public-facing website by **October 3, 2018**
2. Appendix D-3 is filed by Tribes with Trustee and Courts by **December 3, 2018**
3. Trustee files Notice of Beneficiary Designation by **February 4, 2019**
4. Trustee posts a notice on the Indian Tribe Trust's public-facing website and Intralinks regarding the submittal of Appendix D-6 by **February 11, 2018**
5. Tribes submit Designated Beneficiary's Participation Notice (Appendix D-6) by **March 1, 2019**
6. Trustee applies the allocation rules and transmits notices to each of the participating Beneficiaries via Intralinks, regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary by **March 15, 2019**
7. Beneficiaries either submit to the Trustee an EMA Certification Form (Appendix D-4) or elect to opt-out via Appendix D-7 by **May 10, 2019**

As with any new process implementation, there is risk that the process will not go as designed or planned. ITEP should not, and does not agree to be at risk if the new process does not work out as planned. To help avoid such unnecessary implementation challenges of this new process, ITEP recommends increasing the time allowed for tribes to develop and submit their Appendix D-4 applications from 60 days to 90 days.

Tribal Advisory Council – Section 2.1.4

ITEP is agreeable to organizing the Tribal Advisory Council within 30 days of the modification's effective date. However, ITEP does not agree that the Tribal Advisory Council should only provide advice and input to ITEP. The original Trust Agreement stated that the Tribal Advisory Council was to advise the Trustee and not ITEP. ITEP was not consulted on this major term change.

ITEP recommends the Trustee have a continuing role in interacting with tribes for such tasks as reviewing Beneficiary Incumbency Forms, filing Beneficiary notices with the Courts, managing and administering the Beneficiaries funds. Since the Trustee and ITEP play such important roles in the Trust Agreement, we feel strongly that both groups should participate directly with the Tribal Advisory Council. It is logical and respectful that the Trustee interact formally with the Tribal Advisory Council to address concerns and make improvements when appropriate throughout the term of the Trust Agreement. Thus, ITEP recommends that the word "Trustee" be reinserted into Section 2.1.4(i).

Please note, that through recent discussions, ITEP along with Wilmington Trust have developed language that is agreeable to both parties regarding ITEP concerns not specifically addressed in this letter. Please see attachment regarding the language that was accepted by both parties. (See Attachment)

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Marie Chischilly".

Ann Marie Chischilly
Executive Director
Institute for Tribal Environmental Professionals



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ATTACHMENT

MODIFICATION REFINEMENTS

6.5 Modification: Material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Indian Tribe Mitigation Trust. Any modification of this Indian Tribe Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the Indian Tribe Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form) may be made upon written agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court. **Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement between the United States, the Trustee and the technical assistance provider, as necessary to enable the Trustee and the technical assistance to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court.** To the extent the consent of the Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Defendants, no modification shall: (i) require the Defendants to make any payments to the Indian Tribe Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the Indian Tribe Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Indian Tribe Mitigation Trust, whether material or minor, before such modification shall become effective; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

TECHNICAL ASSISTANCE PROVIDER DUTIES REFINEMENTS -

2.1.1.2 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form ("Beneficiary Status Certification Form") (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider's review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. **The technical assistance provider's report relating to its review of the EMA Certification Forms (Appendix D-4) is to be delivered to the Trustee [3/5] business days before the Trustee's deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in paragraph 5.2.16.** If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the



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United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

EMA APPROVAL REFINEMENTS

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Indian Tribe Trust Agreement and its Appendices. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information according to the following schedule: for the first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if **the Trustee requests a modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee's request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary.** A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures). ~~The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt.~~ Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form). The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

TAC CHANGES-

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2.1.4 Tribal Advisory Council. In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and fund a Tribal Advisory Council to: ~~(i) advise the technical assistance provider in evaluating tribal funding requests for Eligible Mitigation Actions; (ii)~~ **(i) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust and (ii) provide a forum for Indian Tribes to raise general questions** ~~[delete -discuss issues relating to the administration of]~~ **relating to** the Indian Tribe Trust Agreement. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members. **The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider's summary report can be submitted to the Trustee as a part of their regular semi-annual report to the Trustee.** The Trustee shall set aside \$30,000 of the Tribal Administrative Cost Subaccount into a separate subaccount, the Tribal Advisory Council Subaccount, for record keeping purposes only, to fund a Tribal Advisory Council for the purposes listed in this subparagraph. The Institute for Tribal Environmental Professionals shall follow the



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requirements of subparagraphs 2.1.1.3, 2.1.1.4, and 2.1.1.5 with respect to funding requests and reporting obligations for the Tribal Advisory Council. The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle. Upon the termination or completion of services by the Tribal Advisory Council, any unused funds shall be returned by the Institute for Tribal Environmental Professionals to the Indian Tribe Trust and added back to the Tribal Administration Cost Subaccount.



THE
MUSCOGEE (CREEK) NATION

Office of Environmental Services
P.O. Box 580 | OKMULGEE,
OK 74447 T 918.549.2587

JAMES R. FLOYD
PRINCIPAL CHIEF

LOUIS A. HICKS
SECOND CHIEF

July 23, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Chief, Environmental Enforcement Section

Re: DJ#90-5-2-1-11386

Department of Justice –ENRD

Env. Enforcement Section

P.O. Box 7611

Washington, DC 20044-7611

Email: pubcomment-ees.enrd@usdoj.gov

Re: Comments on Proposed Material Modification to the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

Dear Sir or Madam:

This letter concerns the proposed Material Modification to the oversubscription allocation method in the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Indian Trust Agreement”). For reasons set forth in the Muscogee (Creek) Nation’s previous letter and in these comments, the Muscogee (Creek) Nation believes that the Trustee should allocate the funding for the first funding cycle in the manner currently required by the Indian Trust Agreement, and that any subsequent changes should ensure that the funding is allocated in a way that meets the fundamental purpose of the trust, which is to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where they were, are, or will be operated.

The Trustee’s proposed material modification cuts the intent of the trust to fund environmental mitigation projects that reduce emissions of nitrogen NOx of subject vehicles and exacerbates the oversubscription problems already identified by the Trustee.

The Muscogee (Creek) Nation does not support the proposed per capita allocation or any approach that would equally divide funds among the eligible beneficiary tribes. The division of funds proposed bears no nexus to remediating the harm caused by the illegal VWs and therefore does not meet the fundamental purpose of the trust in its allocation. The proposed division is not fair to larger tribes, as equal treatment of a tribe with about fifty people in an area compared to a tribe with over fifty thousand people or more in an area would cause an inequitable result. The division of funds as proposed harms tribes that did not apply in year one in reliance on the Trustee distributing funds as set forth in the Indian Trust Agreement. Any approach should not

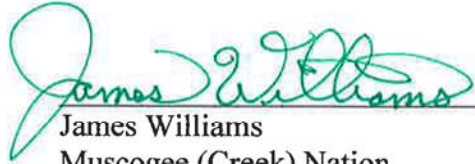
be based solely on the tribes that applied this year, and must account for the 500-plus other tribes that can apply in future funding cycles. If every tribe is guaranteed a equal share of the funding, many more tribes will apply for their guaranteed portion of that funding. That will exacerbate the oversubscription issue, and cut the funding 'pie' into even smaller pieces. This is particularly problematic given the limited types of projects allowed under the Indian Trust Agreement.

The Muscogee (Creek) Nation believes the most appropriate basis for allocating funds under the Indian Trust Agreement remains a per capita method. There are some modifications that the Muscogee (Creek) Nation would support, including a one-time minimum award of \$10,000.00 with the remainder distributed by population, reduced number of funding cycles, and clarification on allowing accumulation/banking of awards. The material modification proposed by the Trustee, however, cuts in half the amount of money that is awarded per capita. This creates massive inequity for larger Indian tribes and moves mitigation funds away from the areas where illegal VWs are, were, or will come to be located. The largest variance from a per capita distribution for the states was a factor of 1.57. The modifications that have been proposed by the Trustee will massively increase the per capita share of smaller tribes at the expense of the per capita share of larger tribes. While the Muscogee (Creek) Nation would support some such modifications despite their negative impacts, the proposed modification is both unfair and inconsistent with the purpose of the Indian Trust Agreement. The Muscogee (Creek) Nation relied upon the original published funding formula in developing its proposal package and invested not insignificant resources to that development process. Any change to the funding formula resulting in a negative impact to larger tribes will mean the Muscogee (Creek) Nation detrimentally relied upon the original funding formula as labor and other resources were expended in thoroughly creating the proposal in accordance with the framework provided pursuant to its decision to waive certain rights and become a beneficiary.

If the Trustee were to allow banking of awards, even the smallest of tribes would be able to receive a larger award by accumulating/banking their per capita award amounts over multiple funding cycles. For example, a tribe of 1,000 would expect to receive a total award of about \$21,300.00, consisting of the \$10,000.00 minimum plus a per capita award of \$11,300.00 ($1,000 * \11.30). This is a per capita award of \$21.30, or a factor of 1.88 times higher than a straight per capita approach. A tribe of 2,000 would expect to receive about \$32,600.00 ($\$10,000.00 + 2,000 * \11.30). This is a per capita award of \$16.30, or a factor of 1.44 times higher than a straight per capita approach. This is a larger variance than was allowed for the states, but reasonable given the diversity within Indian country.

This approach would be most appropriate if paired with a rollback of the project restrictions listed in Appendix D-2. Many of these projects, which include airports, port facilities, tugboats and other large-scale projects are too expensive all but the most affluent tribes. In addition, many of these types of projects simply do not reflect the real needs of Indian country. There are tribes where a small wind energy project could help the community reduce its dependence on diesel generators and make life better, cheaper and cleaner for the entire community. Tribes are diverse in size and in need, and the Trustees' extremely limited list of eligible mitigation projects does not serve or acknowledge that diversity.

Thank you for your consideration of the Muscogee (Creek) Nation's comments. Please do not hesitate to contact me with any questions.



James Williams
Muscogee (Creek) Nation
Environmental Director

cc: Volkswagen Diesel Emissions
Environmental Mitigation Trust for
Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Email: RCrane@wilmingtontrust.com

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
Email: VW_settlement@epa.gov

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Email: eescdcopy.enrd@usdoj.gov



Swinomish Indian Tribal Community

Office of the Tribal Attorney
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A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 5123

July 23, 2018

Gina L. Allery, Deputy Director
Office of Tribal Justice
Department of Justice (DOJ)
950 Pennsylvania Ave NW, Room 2318
Washington, D.C. 20530

VIA: email to OTJ@usdoj.gov

RE: Swinomish Indian Tribal Community's Comments on Proposed Modifications to the Indian Tribe Trust Agreement and Distribution Method for the Tribal Allocation Subaccount of the Volkswagen Environmental Mitigation Trust Agreement

Dear Ms. Allery:

The Swinomish Indian Tribal Community ("Swinomish") submits these comments in response to the invitation of the Department of Justice (DOJ) and Environmental Protection Agency (EPA) to Indian Tribe Beneficiaries to the Tribal Allocation Subaccount of the Environmental Mitigation Trust Agreement ("Trust Agreement") established pursuant to a partial settlement of *In re Volkswagen "Clean Diesel" Marketing, Sales, Practices and Products Liability Litigation*, Case No. 15-md-2672 CRB (JSC) (N.D. Cal.). Most recently, DOJ filed a "Notice of Proposed Material Modifications to the Indian Tribe Trust Agreement" (Notice) with the Court on June 21, 2018, and requested written feedback in its June 25 letter to Tribal Beneficiaries. The purpose of this letter is to provide that feedback, to express Swinomish's opposition to the Notice's proposed allocation formula modifications, and to suggest a single and straight-forward change to the formula that would significantly mitigate Swinomish's concerns: the ability of small tribes to "bank" allocations across multiple funding cycles in order to be able to fully fund an Eligible Mitigation Action.

A. The Proposed Allocation Formula is Flawed and Inadequate

The Notice adopts a more complex version of the population-based allocation formula outlined in DOJ's May 10 letter. As previously communicated to your office in our March 26, April 3, and July 2 letters, Swinomish strongly objects to any allocation formula based on tribal population. The only "population" relevant to the Trust purpose is the set of Subject Vehicles. Swinomish Reservation is located in a state with a high percentage of Subject Vehicles, is crossed by the State Route 20 freeway and is near Interstate 5. Swinomish Tribal members have

Gina L. Allery, Deputy Director
Office of Tribal Justice
July 23, 2018
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consequently been disproportionately impacted by the Subject Vehicles' harmful emissions.¹ As a matter of principle, any allocation formula that ignores the known distribution of Subject Vehicles and their impact upon native communities like Swinomish is inconsistent with the Trust purpose. More pragmatically, the problem with the proposed formula is that it effectively sets a funding limit for small tribes that is below the threshold necessary to fully fund and complete Eligible Mitigation Actions (EMAs).

The Proposed Formula Limits Funding to Small Tribes

The Notice proposes a formula that allocates the total funding for each round on a 50/50 basis: fifty percent pro rata and fifty percent per capita. Swinomish does not object to the pro rata distribution stage, in which half the round's funds are split evenly among the qualifying Tribal Beneficiaries for that round. However, for the per capita stage, the Notice divides tribes into three groups by size. A specific tribe's per capita allocation for each round is determined by that tribe's population share relative to all other Tribal Beneficiaries in the same group.² The Notice places Swinomish in Group One, which contains the vast majority (558) of federally recognized tribes. Swinomish therefore faces the most competition for the funds available. As an additional limiting factor, the formula only reserves approximately half of the per capita funds for Group One. Thus, while Swinomish and over 500 other tribes compete for half of the per capita funds, the remaining half is reserved solely for the ten (10) tribes that make up Groups Two and Three.

Without Banking, Swinomish is Unlikely to Successfully Fund or Complete EMAs

Swinomish has proposed a single EMA based on the replacement of two diesel powered Medium Trucks (Class 4-7). Swinomish is eligible for funding for the first time in Round 2; DOJ has indicated the number of Tribal Beneficiaries is expected to increase significantly compared to Round 1. With Swinomish's pro rata share diluted as a result, in combination with the Tribe's small population relative to the sum of other Group One tribes, Swinomish's single-round allocation is unlikely to fund even the modest EMAs proposed.

The key problem is that under the proposed formula, EMAs costing more than a tribe's single-round allocation "budget" are simply not funded. Specifically, if the EMA's cost exceeds

¹ There are more than 22,000 Subject Vehicles located in the State of Washington. *See* <https://www.atg.wa.gov/news/news-releases/ag-volkswagen-pay-26m-washington-over-consumer-fraud>. By contrast, Oklahoma (where the large Cherokee Nation's reservation is located) has fewer than 4,000 Subject Vehicles. *See* <https://newsok.com/article/5507247/oklahomas-lawsuit-against-vw-to-continue-state-attorney-general-says>. And yet, the proposed allocation formula would strongly favor the Cherokee. This disparity explains why the majority of Tribal Beneficiaries participating in the May 21 teleconference—including the Cherokee themselves—opposed the formula.

² Swinomish notes that the Notice's Appendix D-8, citing U.S. Census Table PCT4, states the 2010 Swinomish population as 734. The May 21 teleconference indicated that population would be measured by tribal statistical area, which corresponds to a 2010 total Swinomish reservation population of 3010. *See* Tribal Census Tract T001, available at <https://tigerweb.geo.census.gov/tigerweb2010/>. As DOJ is aware, Census data historically misreports tribal population. Swinomish can readily provide figures that are more accurate, more recent, or both, including enrollment figures, health survey data, etc.

Gina L. Allery, Deputy Director
Office of Tribal Justice
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the Tribal Beneficiary's allocation for that round, the tribe has two choices: pay the difference, or abandon the project. For tribes with limited resources, like Swinomish, abandonment may be the only practical option. In this scenario, Swinomish would not receive its initial allocation of Trust funds, no matter how diluted—it would receive nothing at all. This outcome is fundamentally inconsistent with the purpose of the Trust Agreement and the underlying settlement.

B. With Banking, Small Tribes Are More Likely to Complete EMAs

Banking is the solution. Banking would allow Tribal Beneficiaries to accumulate allocations from two or more rounds of funding in order to fully fund EMA projects. This approach mitigates the most likely outcome of the current formula: that tribes with the institutional capacity to complete EMAs, like Swinomish, will not do so simply because the project's cost exceeds that round's allocation.

Banking is also a practical option, and well within the administrative capacity of DOJ and Wilmington Trust. The Notice and Agreement already propose to track accounts and conduct monitoring and oversight on a tribe-by-tribe basis. See "Beneficiary Eligible Mitigation Action Certification" (Appendix D-4). Attachments B and C already anticipate multi-year project and reporting periods; Attachment A already allows for multiple payments of Trust funds. *Id.* All that would be required is (1) a simple change to the "Beneficiary's Election to Opt Out Form" (Appendix D-7) allowing participating Tribal Beneficiaries to choose between opting out and banking for one or more cycles, and (2) an extension of reporting deadlines for project completion by the same number of funding cycles. Banked funds could be held by tribes, or retained by Wilmington Trust in a separate sub-account for each approved EMA. If held by tribes, the funds would either be used or returned according to existing procedures. If banked by Wilmington Trust, the funds would either be dispensed when the sub-account balance matches or exceeds the EMA budget, or returned to the Tribal Allocation Subaccount if the project tribe subsequently elects to opt out.

Banking is a straightforward and practical response to oversubscription. Banking also represents a reasonable compromise, allowing the population-based allocation formula to be retained while also providing a viable path to funding for small tribes. If you have any questions about our comments, please do not hesitate to contact me by phone at 360-466-5524 or by email at wlemay@swinomish.nsn.us.

Sincerely,



Weston LeMay
Staff Attorney,
SITC Office of Tribal Attorney

Submitted via: pubcomment-ees.enrd@usdoj.gov

**Comments of the White Mountain Apache Tribe on
the Proposed Modifications to the VW Indian Tribe Trust Agreement**

Section 3.1.2.5.

The Tribe has concerns regarding Trustee funding (“commercially reasonable fees”). The Tribe considers billing at “commercial” rates to trigger commercial standards for client responsiveness. Yet the Tribe reached out to the Trustee at the earliest stages of this funding round, noting its concerns about potential pitfalls in the approach proposed, but received little response and saw no resolution of those questions, leaving it to proceed without any clarification or process alteration.

The Tribe accordingly urges examination of the Trustee arrangement in conjunction with any fee consideration at this juncture. The Tribe provides this comment acknowledging its lack of understanding of the degree of coordination between DOJ and the Trustee and with recognition of that as relevant. The Tribe nevertheless stresses the need for the use of a fee cap for total trust services provided; such an approach will protect the funding intended to flow to tribes and also be consistent with the handling of other multi-claimant proceedings (treatment as “class”) where the restriction is used to avoid disproportionate service fee deductions from the settlement totals.

5.0.5.2. Four Funding Cycles

The revisions provide for distribution of 1/6 of “total remaining assets” in the first funding cycle, 1/3 of the same in second, ½ in the third round and the balance available in final (fourth) round. The Tribe does not understand why the method proposed is not structured to merely divide the total funding into four equal, fixed amounts.

The Tribe objects to any disparate funding levels across funding rounds and comments that each round must be funded equally with the others, with the exception of any residual that results from what should only be non-subscription by applicants or Trustee error. Disparate funding across rounds will only create inequity in funding outcomes. And the Tribe does not consider variations in tribal participation in each round a justification for the introduction of additional variations by DOJ and the Trustee.

Section 1 Definitions

The Tribe also requests that the term “total remaining assets” be included as a defined term in Section 1 of the Agreement; without that clarification the total tribal share available for distribution is unclear.

Additional Process Comments

The Tribe does not understand the action by DOJ to rescind its written promise to receive comments on this process through July 2 by instead directly filing its proposed revisions with the Court. The Tribe requests clarification of whatever prompted that action by DOJ.

From: Horan, Christopher <Christopher.Horan@SRPMIC-nsn.gov>
To: ENRD, PUBCOMMENT-EES (ENRD)
CC: King, Niccole; Hibbard, Carol
Sent: 7/20/2018 12:33:08 PM
Subject: VW Settlement SRPMIC

Hello,
Below is the Salt River Pima Maricopa Indian Community Overall Comments for VW Settlement.

1. Should the current allocation formula be retained? If not, what other potential allocation formulas or factors should be considered for a replacement formula?

The current allocation formula should be replaced. SRPMIC does not support the EECGB allocation formula as it was developed for housing and housing characteristics. Funding should be allocated via a competitive process involving program capacity, project design, ability to complete project within a reasonable amount of time, etc. The distinction between mobile sources and stationary sources should be clarified and a focus should be on mobile source reductions as NOx emissions from mobile sources were the crux of the enforcement case and eventual settlement.

2. Should the Trust Agreement be amended to specify a maximum amount that any one Beneficiary can request in a funding cycle? If so, what is an appropriate maximum amount?

A maximum amount per Beneficiary per funding cycle MAY be necessary. However, the end goal of the settlement is NOx reductions from mobile sources. Establishing a maximum amount per cycle would make it appear as though each tribe has similar program capacity, which is not the case. Tribes that were directly affected by 15 years of NOx noncompliance should be considered as primary recipients, particularly those with Tribal areas in ozone nonattainment areas. Maximum amounts, if employed, should be tiered based upon the direct effects of Volkswagen's noncompliance on a particular Tribal area.

3. Should the Trust Agreement establish a maximum amount that any one Beneficiary can request for the duration of the Trust's first six funding cycles? If so, what is an appropriate maximum amount?

No, there should not be a maximum amount that a beneficiary can request/receive. Priority should be focused on viability of projects with regard to reduction of NOx emissions from mobile sources, as well as the capacity of the Tribe to complete projects within a reasonable time frame. The evaluations should be open with the Beneficiary present to address concerns and answer questions.

4. Should the Trust Agreement establish a minimum amount for the allocated share for each Beneficiary? If so, what is the minimum amount?

There should not be a minimum amount established for the allocated share for each beneficiary. Tribal capacity varies significantly between tribes. Minimum amounts, if established, should be tiered based upon Tribal capacity.

5. Why proximity to NOx or PM nonattainment areas was not considered when the purpose of the settlement was to reduce NOx in areas affected by VW's noncompliance? Two Group 3 tribes are not in NOx or PM nonattainment areas.

While the argument may be made that nonattainment status was considered with the states for their settlements, the states are not sharing their settlements with tribes even if tribe is affected by the pollution and there are Group 1 tribes in nonattainment areas.

6. Comments to the May conference call were due July 2, but the letter addressing comments for this

conference call was dated June 22. Why was the allotted time not honored? Will comments received after June 22 be addressed/acknowledged?

7. Since the funding for smaller tribes will be significantly less than expected, can funds be held over to the next allocation to allow for project completion without having to expend Tribal funds?
8. Why did states not have to go through this process in order to be allocated funds?

SRPMIC may submit additional recommendations for any further discussions on current and future allocations.

If there are questions please feel free to contact me!

Sincerely,

Christopher "Chris" Horan
CDD-EPNR Division Manager
Community Development Department (CDD)
Environmental Protection & Natural Resources (EPNR)
Salt River Pima Maricopa Indian Community
Off: Two Waters, Bldg. B, 3rd fl., 10079 E. Osborn Rd., Scottsdale, AZ 85256
Mail: 10005 E. Osborn Rd., Scottsdale, AZ 85256

christopher.horan@srpmic-nsn.gov

(480) 362-7639

(602) 515-6764

(480) 362-7584

From: Monte Gray <mgray@sbtribes.com>
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 7/23/2018 6:56:51 PM
Subject: Written Comments for VW Settlement Modifications

Dear Department of Justice:

The Shoshone-Bannock Tribes ("Tribes") would like to share the following comments in support of the current proposed modification to the VW Settlement Trust Agreement. The Tribes support the modification and wish to extend their appreciation for the efforts of the parties to make the agreement that is a more balanced approach. The prior terms were split on only a pro rata division based on population which heavily favored large population tribes. The new approach strikes a healthy balance of both a pro rata and per capita solution.

The Shoshone-Bannock Tribes are one of the 26 eligible beneficiaries in the 1st cycle of funding. Our submission attempted to switch out engines for vehicles utilized in our fire department and a vehicle for our solid waste department that were sorely needed in addition to improving the air emissions related to those vehicles. The prior approach would have severely limited the Tribes ability to accomplish these modest projects even over the entire funding period.

Best regards,
Monte C. Gray
Asst. General Counsel
Office of Tribal Attorneys
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
Direct Phone: (208) 478-3781
Facsimile: (208) 237-9736
E-mail: mgray@sbtribes.com

From: Michael Layne <MLayne@SanManuel-NSN.Gov>
Date: May 21, 2018 at 12:43:09 PM EDT
To: OTJ <OTJ@usdoj.gov>
Cc: "Gina.Allery@usdoj.gov" <Gina.Allery@usdoj.gov>
Subject: RE: written comments

We have the following additional comments to add:

We agree with reducing the number of funding cycles. However, the first funding cycle should be limited to the \$9 Million amount that was originally discussed. If Tribes knew a higher amount of funding would be available in the first Cycle – more would have registered. It is unfair at this point in time to increase the amount of funding available in Cycle 1.

Step 2: Pro Rata Population-based Distribution: We recommend this formula NOT be population-based, but rather focused on air pollution levels impacting each Tribe. You could consider using an EPA air pollution index formula, whereby the remaining 50% of funding would be broken up into two or three groups –such as (1) Extreme Air Pollution levels; (2) Moderate Air Pollution Levels; and (3) Low Air Pollution Levels. A majority of funding should be focused on those Tribes who have verifiable/historic air pollution levels related to diesel emissions.

We continue to believe there needs to be an equitable distribution safeguard in place to ensure first time applicants receive full funding priority over those tribes who were awarded funds in prior cycles. For example, if Tribe X applies for and receives funding in Cycle 1 – they should NOT be able to receive the full funding amount in Cycle 2 that new applicant Tribe Z is awarded. Perhaps consider 100% of funding be committed to new applicants in Cycle 2-5, and if there is any left-over amounts in any one cycle, then prior awardees could seek that pot of money.

We agree with notifying applicants of their proposed distribution amount ahead of time – and then

allowing them to submit an eligible mitigation activity within 30 days. It is difficult to submit an accurate scope of work without knowing the potential allocation amounts ahead of time.

Lastly, what safeguards are in place to ensure awardees spend down their funds on time and consistent with their approved scope of work? For example, if Tribe X is awarded funding in Cycle 1 -what process is in place to ensure those funds are expended in a timely manner and the project is fully completed? Will the Trust demand return of funds not expended by a certain time?

Michael Layne

GRANTS ADMINISTRATION MANAGER, TRIBAL FINANCE

O: (909) 864-8933 x2168

M: (909) 838-0559

26569 Community Center Drive, Highland California 92346



From: Michael Layne

Sent: Thursday, May 10, 2018 3:08 PM

To: 'OTJ' <OTJ@usdoj.gov>

Cc: 'Gina.Allery@usdoj.gov' <Gina.Allery@usdoj.gov>

Subject: written comments

In response to your letter dated May 10, 2018, we would offer the following written comments.

1. Tribe's applying for EMA-10 projects should NOT be required to apply for and receive DERA funding from EPA for stationary generator replacement projects when those tribes are unable to meet the annual generator usage requirements due to EPA air permitting restrictions. San Manuel submitted a responsive proposal for DERA funding. However, EPA's own air permitting requirements limit the use of all six generators to no more than 558 hours annually –collectively. There is no way we would be able to meet the DERA grant operating requirements for each generator. As such, San Manuel should be allowed to submit a revised project for Cycle 1 consideration –as we met all other conditions of the Trust.
2. Due to the reduced number of funding cycles proposed and the likelihood that Tribes in Round 1 will receive a higher level of funding than those Tribes who will receive funds in successive cycles (due to the likelihood of more applicants applying in Cycles 2-5), we would recommend that Tribes who receive awards in any funding cycle –ONLY be considered for additional funding in future cycles – if funds remain AFTER first funding Tribes who did NOT receive funding in prior cycles. Otherwise, Tribes funded in Cycle 1 will receive a disproportionate level of funding from those who did not –at the end of the five-six year cycles. There should be a process in place that priorities equitable distribution of Trust funds –and discourages any one Tribe from receiving disproportionate funding amounts over others.
3. We continue to strongly believe these allocations be made – NOT based on population of Tribes – but more importantly, on verifiable air pollution issues impacting each Tribe regardless of size or location. It is fundamentally unfair and inconsistent with the purpose of the settlement agreement to award large amounts of Trust Funds to larger Tribe who may have minimal air pollution issues over smaller Tribes with scientifically verifiable air pollution issues resulting from diesel emissions. Tribes who are located in

areas with high diesel emissions and who historically have suffered from extreme air pollution, should receive the highest consideration – without regard to population or size.

4. Tribes located in or near urban areas should be allowed to use population data from the US Census for any relevant Metropolitan Statistical Area (MSA), if the Reservation is located within the boundaries of that MSA. Due to the urban sprawl that occurs in these areas, projects will certainly benefit and impact many residents beyond the boundaries of the Reservation. As such, that population data should be factored into the equation.

Overall, your proposed changes continue to be primarily focused on some sort of population-based formula, rather than problems, benefits, impacts of each applicant –without regard to population or location. This is fundamentally unfair to smaller Tribes in or near urban locations who historically suffer and who disproportionately suffer from horrific air pollution issues (with diesel emissions being a major contributor). In other words, more funds should be directed to those Tribes who can prove they suffer/have suffered disproportionately from diesel emissions (including their MSA population) over others – without regard to population. Those Tribes who have the greatest demonstrable need, will surely require higher levels of funding to make any sort of dent in air pollution issues related to diesel emissions.

-Mike Layne

San Manuel Band of Mission Indians

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From: Michael Layne <MLayne@SanManuel-NSN.Gov>
Sent: Thursday, May 10, 2018 6:08 PM
To: OTJ <OTJ@jmd.usdoj.gov>
Cc: Allery, Gina L. (OTJ) <gallery@jmd.usdoj.gov>
Subject: written comments

In response to your letter dated May 10, 2018, we would offer the following written comments.

1. Tribe's applying for EMA-10 projects should NOT be required to apply for and receive DERA funding from EPA for stationary generator replacement projects when those tribes are unable to meet the annual generator usage requirements due to EPA air permitting restrictions. San Manuel submitted a responsive proposal for DERA funding. However, EPA's own air permitting requirements limit the use of all six generators to no more than 558 hours annually –collectively. There is no way we would be able to meet the DERA grant operating requirements for each generator. As such, San Manuel should be allowed to submit a revised project for Cycle 1 consideration –as we met all other conditions of the Trust.
2. Due to the reduced number of funding cycles proposed and the likelihood that Tribes in Round 1 will receive a higher level of funding than those Tribes who will receive funds in successive cycles (due to the likelihood of more applicants applying in Cycles 2-5), we would recommend that Tribes who receive awards in any funding cycle –ONLY be considered for additional funding in future cycles – if funds remain AFTER first funding Tribes who did NOT receive funding in prior cycles. Otherwise, Tribes funded in Cycle 1 will receive a disproportionate level of funding from those who did not –at the end of the five-six year cycles. There should be a process in place that priorities equitable distribution of Trust funds –and discourages any one Tribe from receiving disproportionate funding amounts over others.
3. We continue to strongly believe these allocations be made – NOT based on population of Tribes – but more importantly, on verifiable air pollution issues impacting each Tribe regardless of size or location. It is fundamentally unfair and inconsistent with the purpose of the settlement agreement to award large amounts of Trust Funds to larger Tribe who may have minimal air pollution issues over smaller Tribes with scientifically verifiable air pollution issues resulting from diesel emissions. Tribes who are located in areas with high diesel emissions -and who historically have suffered from extreme air pollution, should

receive the highest consideration – without regard to population or size.

- 4. Tribes located in or near urban areas should be allowed to use population data from the US Census for any relevant Metropolitan Statistical Area (MSA), if the Reservation is located within the boundaries of that MSA. Due to the urban sprawl that occurs in these areas, projects will certainly benefit and impact many residents beyond the boundaries of the Reservation. As such, that population data should be factored into the equation.

Overall, your proposed changes continue to be primarily focused on some sort of population-based formula, rather than problems, benefits, impacts of each applicant –without regard to population or location. This is fundamentally unfair to smaller Tribes in or near urban locations who historically suffer and who disproportionately suffer from horrific air pollution issues (with diesel emissions being a major contributor). In other words, more funds should be directed to those Tribes who can prove they suffer/have suffered disproportionately from diesel emissions (including their MSA population) over others – without regard to population. Those Tribes who have the greatest demonstrable need, will surely require higher levels of funding to make any sort of dent in air pollution issues related to diesel emissions.

-Mike Layne
 San Manuel Band of Mission Indians

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From: Michael Layne <Mlayne@SanManuel-NSN.Gov>
To: OTJ
CC: Andy Bessler; Crane, Russell
Sent: 7/30/2018 4:55:31 PM
Subject: RE: Final written comments Volkswagen Settlement Formula Discussion

Good Afternoon:

Our continued concern is that the few Tribes who got qualified for funding in Cycle 1 –are able to obtain equal allocations in subsequent funding cycles as Tribes who have not received an allocation previously. This creates a needless and unequal disparity in awards.

Our suggestion continues to be to give full funding to first-time recipients FIRST, and if funds still remain thereafter in any funding cycle, then allocate that pool of money to those Tribes who have received a previous allocation.

Finally, there continues to be a lack of priority for projects located in areas that have suffer disproportionately from extreme air pollution –largely due to diesel emissions. You continue to insist on a funding formula that does not take this issue into account. As a result, those Tribes who historically suffer the most from diesel emissions will receive the same funding-levels as those Tribes located in areas with little or any diesel emissions issues. This seems to be in conflict with the purpose of the Trust.

-Mike Layne
San Manuel Band of Mission Indians

Michael Layne
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26569 Community Center Drive, Highland California 92346
The logo for the San Manuel Band of Mission Indians features the words "SAN MANUEL" in a large, bold, serif font. Below it, "BAND OF MISSION INDIANS" is written in a smaller, sans-serif font. To the left of the text is a circular emblem containing a stylized figure, possibly a Native American, with a feathered headdress.

From: OTJ [mailto:OTJ@usdoj.gov]
Sent: Thursday, May 10, 2018 12:23 PM
To: OTJ <OTJ@usdoj.gov>
Subject: DOJ EPA May 2018 Update: Volkswagen Settlement Formula Discussion

Dear Tribal Leader:

The Department of Justice and the Environmental Protection Agency hope you will be able to participate in an additional discussion on the distribution of the Volkswagen Settlement-related Tribal Trust Agreement. Discussions on May 21, 2018 at 2pm Eastern. Please see the attached for background information and participation instructions.

Thank you.

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ATTACHMENT D

United States' Response to Public Comments

United States v. Volkswagen AG, et al., Case No. 3:16-cv-00295

**Response to Public Comments Received by the United States re:
Proposed Material Modifications to Indian Tribe Trust Agreement**

On June 21, 2018, the United States filed a notice of proposed material modifications to the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (hereafter “Indian Tribe Trust Agreement,” “Trust Agreement,” or “Trust”), stating that it would accept written comments from Beneficiaries and potential Beneficiaries relating to the proposed modifications to the Trust Agreement. *United States v. Volkswagen AG, et al.*, Case No. 3:16-cv-00295 (“*U.S. v. VW*”), Dkt. No 62 at 2.¹ In that 30-day comment period, the United States received 12 written comments. The United States also received 43 written comments after three discussion sessions with Indian Tribes regarding potential modifications to the Trust Agreement. All of these comments are attached in full as Attachment C to the Notice of United States’ Consent to Modifications to the Indian Tribe Trust Agreement and Memorandum in Support of its Request for Court Approval of Modifications (hereafter “U.S. Request for Court Approval of Modifications”). The United States has consolidated and organized the comments into 12 categories presented below. For each summary, the types of comments are described generally, followed by a narrative response that explains the United States’ consideration of the comments and what change, if any, was made to the Trust Agreement as a result.

I. Allocation Formula in the Trust Agreement

Under the terms of the current Trust Agreement, if the total funding requests from Beneficiaries exceed the amount of funds available to be committed in a funding cycle (i.e., an oversubscribed funding cycle), the Trustee should not approve funding requests pursuant to subparagraph 5.2.16, but should instead apply a strictly population-based formula to distribute the Trust funds. *Id.*, Dkt. No. 51-2 at 27, ¶5.0.5.2.3. Because the first funding cycle was oversubscribed, the strictly population-based formula would have applied. However, the Court issued an Order on March 2, 2018, directing the Trustee to take no further actions relating to its obligations under Section V (Distribution of Indian Tribe Mitigation Assets) of the Trust Agreement, and ordering the United States to meet and confer with interested Beneficiaries of the Trust Agreement, in consultation with the Trustee, to determine whether an adjustment to the Trust Agreement’s allocation method is necessary to ensure that Trust funds are distributed in a manner consistent with the Trust’s purpose. *In re: Volkswagen “Clean Diesel” Marketing*,

¹ In this Attachment, all page references to a Court document are to those pages in the header of the Court document (e.g., page 2 of 123).

Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC) (“*MDL Litigation*”), Dkt. No. 4867 at 3 (hereafter “March 2 Order”).

1. Population-based Allocation

Comments: Several Indian Tribes supported the retention of a strictly population-based allocation in the Trust Agreement in the event of an oversubscribed funding cycle. They argued that a population-based allocation would have the closest nexus to the purpose of the Trust Agreement, which they identified as funding mitigation projects where the Subject Vehicles were, are, or will be operated. Two Tribes supported a population-based allocation subject to the condition that the Trust contain a cap on funding requests per funding cycle of \$1.2 million per Tribe. Other Indian Tribes argued against a strictly population-based allocation, claiming that it is inconsistent with the Trust’s purpose because the population of a Tribe does not necessarily correspond to the number of “Subject Vehicles,” as defined in subparagraph 1.26 of the revised Trust Agreement, located in a given area, or reflect the Subject Vehicles’ impacts on communities that have borne a disproportionate share of the adverse impacts of NOx emissions. As they explained, the harm caused by the Subject Vehicles is not based on how many members a Tribe has, but on how many Subject Vehicles drive on its reservation. Some smaller Tribes near urban areas claimed it was unfair to award a greater amount of funding to larger Tribes that are located in rural areas that do not suffer disproportionately from air quality issues. Because all geographical areas were harmed by Defendants’ conduct, they argued that the Trust’s allocation formula should be tied to an implied purpose of broadly distributing funding opportunities across Indian Country. One commenter advocated that the allocation formula should be changed to give every Indian Tribe an opportunity to make a meaningful difference in its community. Similarly, one commenter proposed that the allocation formula should provide a base amount for each participating Tribe in an amount sufficient to complete a project.

Response: The Indian Tribe Trust Agreement is intended “to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries.” *Id.*, Dkt. No. 51-2 at 6, ¶2.0.3. Under the Trust Agreement, the term “Beneficiary” is broadly defined to include “each Indian Tribe determined to be a Beneficiary pursuant to Section IV (Indian Tribe Mitigation Trust Beneficiaries)” of the Trust Agreement; any federally-recognized Indian Tribe may elect to become a Beneficiary of the Trust by complying with the requirements of the Trust Agreement. *Id.* at 3, ¶1.1; 21, ¶4.0.

After the Partial Consent Decree was entered by the Court, the United States conducted a consultation period with Indian Tribes in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among the Indian Tribes that are deemed Beneficiaries under the Trust. *MDL Litigation*, Dkt. No. 2103-1 at 185, ¶2.1.1. As the United States explained in its response to comments from participating Indian Tribes in the consultation period, since the establishment of the Diesel Emissions Reduction Act (“DERA”) program in 2005, EPA had gained considerable experience in

the implementation of NOx mitigation projects. Declaration of Robert Mullaney in Support of United States' Request for Court Approval of Modifications to the Indian Tribe Trust Agreement ("Mullaney Decl."), ¶3, Exh. A at 2.² Based on this experience, the United States expressed its belief that there would be sufficient Trust funds for a majority of requests from Beneficiaries: "In EPA's experience administering the Tribal DERA program, the amount of funds available in each year should be sufficient to fund a majority of the requests in a given year." *Id.*, Exh. A at 4. Notably, the general provision in subparagraph 5.0.5.2.2 of the Trust Agreement was intended to apply if the Trust funds available to distribute in the first funding cycle had been sufficient to meet the total amount of funding requests. That provision would have permitted each Beneficiary, without regard to its population, to receive the entire amount of its funding request subject to the Trustee's review and approval. *U.S. v. VW*, Dkt. No. 51-2 at 27, ¶5.0.5.2.2. Therefore, if there had been sufficient funds in the first funding cycle as EPA had anticipated, subparagraph 5.0.5.2.2 of the Trust Agreement directed the Trustee to "make no adjustments to the funding requests before processing funding requests pursuant to subparagraph 5.2.16." *Id.* In short, the distribution of Trust funds was not intended to be allocated based on population *except* in the case of oversubscription, which was considered an unlikely occurrence.

In response to comments from the Tribal consultation process after the Partial Consent Decree was entered by the Court on October 25, 2016, the United States explained the process that would result if a particular year is oversubscribed. Mullaney Decl., ¶3, Exh. A at 4-5. However, the United States' hypothetical case included Tribes with populations of 50,000 to 400,000 (*id.* at 4), which did not accurately reflect the wide divergence in the populations of potential Indian Tribe Beneficiaries. Consequently, the inequity that would result for smaller Indian Tribes from the application of a strictly population-based allocation in an oversubscribed funding cycle was unanticipated.

The total amount of funding requests received during the first funding cycle from 27 Beneficiaries greatly exceeded the funds available for distribution. Based on this first funding cycle, it appears that the demand for funding from Indian Tribe Beneficiaries will greatly exceed the amount of Trust funds available for distribution in each funding cycle. Under these circumstances, the United States, after conducting discussion sessions with interested Beneficiaries and conferring with the Trustee, determined that an application of a strictly population-based allocation formula is inconsistent with the purpose of the Trust Agreement. Instead, as explained below, a hybrid allocation formula was derived for the modified Trust Agreement, in which 50 percent of the allocation of available funds in a

² This declaration is attached to the U.S. Request for Court Approval of Modifications as Attachment E.

funding cycle is based on a per capita allocation and 50 percent is based on a pro rata population-based allocation.

2. Hybrid Allocation Formula

Comments: In response to the Court’s March 2 Order, after conducting three discussion sessions with interested Indian Tribes, the United States, in consultation with the Trustee, proposed a hybrid allocation formula for the modified Trust Agreement on June 21, 2018. *Id.*, Dkt. No. 62. Comments regarding an appropriate allocation formula varied widely. A number of commenters supported the 50/50 allocation. One commenter opposed it because the component based on population would unfairly devote half of the available funding to a few larger Tribes. Several commenters stated that the formula should divide 70 percent of funds equally among Beneficiaries and divide 30 percent based on population, claiming that the 70/30 split is a common funding arrangement for the Bureau of Indian Affairs and Indian Health Services. One commenter proposed that all participating Beneficiaries in the first cycle should be given an equal amount of funds. Two Tribes supported fully funding all Beneficiaries in the first funding cycle by taking money from future funding cycles. Two other commenters advocated a 10/90 split (per capita versus pro-rata populations-based allocation). Finally, two larger Indian Tribes opposed any equal distribution of funds among participating Beneficiaries in a funding cycle, claiming that a per capita allocation would be inconsistent with the Trust’s purpose. They asserted that any modification to increase the per capita share of smaller Tribes would come at the expense of the larger Tribes. In addition, two commenters argued that if the allocation formula guaranteed an equal share of funding to participating Beneficiaries, it would encourage more Tribes to apply. This result would exacerbate the oversubscription problem because the funding “pie” would be sliced into smaller pieces.

Response: The Partial Consent Decree required Defendants to make \$2.7 billion in mitigation trust payments to a trust to fund Eligible Mitigation Actions to achieve NOx reductions in accordance with requirements to be set forth in a trust agreement. *MDL Litigation*, Dkt. No. 2103-1 at 15, ¶14. The funding provided for in both the Indian Tribe Trust Agreement and the State Trust Agreement is intended to fully mitigate the excess NOx emissions from the Subject Vehicles. *U.S. v. VW*, Dkt. Nos. 51-1 at 2, 51-2 at 2. Moreover, “[t]he goal of each Eligible Mitigation Action” undertaken by a Beneficiary “shall be to achieve reduction of NOx emissions in the United States.” *Id.*, Dkt. No. 62 at 9, ¶2.0.3 (Trust Purpose).

After the Court’s March 2 Order, the United States convened three sessions with Indian Tribes to discuss equitable methods to allocate funds among the Beneficiaries in light of the purpose of the Indian Tribe Trust Agreement. In the State Trust Agreement, a specific amount of Trust funds is allocated to each State that corresponds generally to the number of Subject Vehicles registered in that State. Vehicle registration was not an available allocation method for the Indian Tribe Trust Agreement because most Indian

Tribes do not have a separate registration system for cars. The Indian Tribe Trust Agreement contains only one account, the Tribal Allocation Subaccount, to fund any Eligible Mitigation Actions by the Indian Tribe Beneficiaries.

A key allocation issue to consider under the Indian Tribe Trust Agreement is the wide dispersion in populations of the 568 Indian Tribe potential Beneficiaries, ranging from a reported population of zero to over 125,000 according to 2010 U.S. Census data. In consultation with the Trustee, the United States used the 2010 U.S. Census data for each Beneficiary and then applied the Jenks natural breaks optimization method (“Jenks”) to separate the 568 federally recognized Indian Tribes into three Groups based on population.³ The application of this Jenks method is reflected in an Alignment Table, Appendix D-8 to the modified Trust Agreement, which will be used to determine the population of each Indian Tribe for the pro rata population-based allocation portion of the hybrid allocation formula described below.

The projected application of the strictly population-based allocation to the oversubscribed first funding cycle would have reserved a vast majority of the Trust’s funds to the three largest Tribes and left the smaller Tribes with insufficient funds to complete even a single mitigation project. The Trust Agreement’s purpose -- “to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries.” (*id.*, Dkt. No. 51-2 at 6, ¶2.0.3) -- would be thwarted by that result because the Trust Agreement’s benefits are not tied strictly to population and are not limited to larger Tribes only. In order to allow smaller Tribes a way to fund an Eligible Mitigation Action, the United States, in consultation with the Trustee, derived a hybrid allocation formula, in which half of the available funds is divided equally among the participating Beneficiaries in a funding cycle and half is divided based on each Tribe’s population. This hybrid allocation formula serves a dual purpose. First, the per capita allocation serves to broadly distribute funding opportunities among Indian Tribes across the country, providing each Indian Tribe an opportunity to make a meaningful difference in its community. This will afford each participating Beneficiary, without regard to population, with the means to complete an Eligible Mitigation Action, which furthers the purpose of both the Partial Consent Decree and the Trust Agreement. *MDL Litigation*, Dkt. No 2103-1 at 15, ¶14; *U.S. v. VW*, Dkt. No. 51-2 at 6, ¶2.03. Second, the pro rata

³ The Jenks method is a generally accepted approach to create groupings when there is only one delimiting statistic. In this case, the Trust Agreement established population as the delimiting statistic by which the Beneficiaries can receive Trust funds. The Jenks method uses computer calculations to calculate every possible grouping in order to determine which grouping will best meet two goals: (1) values within each group should be as similar as possible; and (2) values across each group should be as different as possible from the values in any other group.

population-based allocation recognizes that approximately 50 percent of the American Indian and Alaska Native population are members of a small number of larger Tribes. Although population is not a perfect proxy to measure the impacts of the Subject Vehicles, a hybrid allocation formula based partly on population ensures that a significant part of the Trust's funds will be used for mitigation projects to serve the needs and benefit the health of the large percentage of American Indians and Alaska Natives represented by these larger Indian Tribes.

3. Allocation Formula for the First Funding Cycle

Comments: Several commenters, representing Indian Tribe Beneficiaries with larger populations, stated that the current allocation formula, which provided a strictly population-based allocation in an oversubscribed funding cycle, should not be changed for the oversubscribed first funding cycle. These Beneficiaries asserted that they had relied on the allocation formula in the current Trust Agreement in applying for Beneficiary status, and had made strategic decisions based on the allocation formula. Numerous other Beneficiaries, representing smaller Indian Tribes, stated that the current allocation scheme should be modified for the first funding cycle because its application would provide most of the Trust's benefits to a few larger Tribes, and result in Trust distributions to smaller Tribes that are insufficient to allow them to complete an eligible mitigation project.

Response: Retention of the strictly population-based allocation for the oversubscribed first funding cycle would have distributed more than 90 percent of the Trust's benefits to three larger Indian Tribes located within one State while leaving the majority of Indian Tribes across the United States without adequate funds to complete a single project. The Trust Agreement contained Paragraph 6.5 (Modification) to allow the United States and the Trustee to modify its provisions to address and avoid unintended consequences such as this. *U.S. v. VW*, Dkt. No. 51-2 at 37, ¶6.5. The hybrid allocation formula in the modified Trust Agreement will lead to a more equitable result, providing sufficient funding for each of the 26 Beneficiaries in the first funding cycle to complete a project. Accordingly, the United States believes that the hybrid allocation formula should apply to the first cycle and all remaining funding cycles of the Trust Agreement. Significantly, the Trust Agreement provides at least two viable options to any Beneficiary that will not receive the full amount of its funding request in the first funding cycle. First, the Indian Tribe can choose to remain a Beneficiary and apply for additional funding for its Eligible Mitigation Action projects in the Trust's subsequent funding cycles. As one larger Tribe aptly noted, some proposed Eligible Mitigation Action projects can be separated into stages and implemented over several funding cycles. Alternatively, if a designated Beneficiary is dissatisfied with the hybrid allocation formula in the modified Trust Agreement, it can withdraw its Certification for Beneficiary Status under the Trust Agreement (Appendix D-3) before it receives any Trust funds, which would preserve any claims for injunctive relief to redress environmental injury it might have against the

Defendants. *See id.* at 23, ¶4.2.6 (“No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.”).

4. Allocation Based on Nonattainment Status

Comments: Several commenters proposed that an allocation formula should take into account a Tribe’s proximity to ozone and particulate nonattainment areas.⁴ A commenter asserted that smaller Tribes in the Los Angeles area suffer from the worst air pollution levels in the country while some of the larger Tribes are not located in nonattainment areas. A commenter proposed that: (1) all participating Beneficiaries should be required to submit a notice of proximity to a particulate or ozone nonattainment area; (2) the Trust Agreement should reserve 10 percent of available funds for allocation to those Tribes in nonattainment areas; and (3) within that pool, the Trustee should distribute funds among the affected Tribes based on the Tribe’s percentage of the total population in the pool. Another commenter proposed that the allocation should take into account traffic counts within each Beneficiary’s area.

Response: The Partial Consent Decree required the Defendants to establish and fund a trust to be used by States and Indian Tribes to implement NOx reduction projects to mitigate the excess tons of NOx emitted by the Subject Vehicles. *MDL Litigation*, Dkt. No. 2103-1 at 15, ¶14. The parties decided to create two trusts, the Indian Tribe Trust Agreement for Indian Tribes and the State Trust Agreement for States. *U.S. v. VW*, Dkt. No. 48 at 5. The allocation formula in these two Trust Agreements is not tied to an area’s nonattainment status. Given the myriad of factors that could contribute to an area’s nonattainment status, it would be a complex and lengthy undertaking to track and evaluate the impact of Subject Vehicles’ emissions in a given area. Moreover, traffic counts will not provide any data on the number of Subject Vehicles contributing to that traffic. The allocation scheme in the State Trust Agreement relied on a readily available metric, the number of registered Subject Vehicles in each State, to ensure that more Trust funds will be available for mitigation projects in States where a larger number of Subject Vehicles are located. For example, California will receive approximately 14.5 percent of total allocations under the State Trust Agreement. Indian Tribes do not all have separate

⁴ The Clean Air Act requires EPA’s Administrator to develop national ambient air quality standards (“NAAQS”) for air pollutants such as ozone and particulate matter. 42 U.S.C. § 7409. After promulgation of the NAAQS for an air pollutant, a State’s Governor is required to submit to EPA a list of all areas in the State, designating each area as “nonattainment” (i.e., failing to meet the NAAQS), “attainment” (i.e., meeting the NAAQS), or unclassifiable. 42 U.S.C. § 7407(d)(1)(A). EPA’s Administrator is authorized to promulgate the designation of these areas as nonattainment, attainment or unclassifiable. 42 U.S.C. § 7407(d)(1)(B); *see* 40 C.F.R. Part 81 (designation of areas for air quality planning purposes).

car registration programs or other readily available metrics that would easily allow the United States to track the presence of Subject Vehicles in Indian Tribe geographic areas. The United States and the Trustee believe that the hybrid allocation formula, which includes a pro rata population-based allocation, is the best proxy under the circumstances to implement the Trust Agreement's purpose. Moreover, each Indian Tribe is located in one or more States, and an Indian Tribe's members will benefit from both the States' mitigation measures and the respective Indian Tribe's measures. Notably, each State Beneficiary is required to submit a Beneficiary Mitigation Plan summarizing how the State plans to use the mitigation funds allocated to it. *U.S. v. VW*, Dkt. No. 51-1 at 21, ¶4.1. As part of the Plan, the State must describe its consideration of the potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction. *Id.*; see also *id.* at 27, ¶5.2.10; Dkt. No. 62 at 42, ¶5.2.10 (each funding request from a Beneficiary shall describe, if applicable, how the Eligible Mitigation Actions mitigate the impacts of NOx on communities that have historically borne a disproportionate share of the adverse impacts of such emissions).

5. Other Allocation Proposals

Comments: During the three discussion sessions and in separate written comments, participating Indian Tribes submitted a wide variety of proposals regarding allocation. Several Indian Tribes advocated that allocation should be based on financial need. Others proposed that the allocation scheme should consider the size of an Indian Tribe's land base and its transportation needs (e.g., the size and age of its diesel fleet). Some Indian Tribes proposed that the Trustee establish a competitive grant program. To ensure fairness, one Tribe stated that priority should be given to first-time recipients. Similarly, two commenters stated that Beneficiaries that are awarded an adequate amount to complete a project in the first funding cycle should not be eligible to apply in future funding cycles, reserving funding in future cycles for new applicants. Commenters also advocated that limits be placed on the maximum allocation a Beneficiary could receive in one funding cycle and for the life of the Trust, while others proposed a limit of the number of funding requests that could be submitted by one Tribe. Two commenters supported a guaranteed one-time \$10,000 grant to all applicants.

Response: After the Court's March 2 Order, the United States received and considered a wide range of proposals from participating Indian Tribes regarding allocation under the Trust Agreement, and conferred at length with the Trustee. The United States notes that the Trust Agreement is not structured as a competitive grant program, and the Trustee is not required to assess an Indian Tribe's financial needs or transportation needs in order to approve a funding request. The hybrid allocation formula in the modified Trust Agreement serves to ensure a fair allocation of available funds in each funding cycle to the Beneficiaries who have expressed interest in participating in that cycle. Application

of this formula eliminates the need to reserve priority for new applicants or to limit the size or number of funding requests by a Beneficiary. The hybrid allocation formula guarantees an actionable minimum amount of funding and creates a *de facto* cap based on the number and size of Indian Tribe Beneficiaries participating in the funding cycle.

II. Issues Relating to Implementation of the Trust Agreement

The modifications to the Trust Agreement's equitable allocation formula involved other related modifications throughout the Trust Agreement. See *U.S. v. VW*, Dkt. Nos. 56 at 3, 58 at 3. In this Section, the United States generally describes the types of comments it received on these topics, followed by a narrative response that explains the United States' consideration of the comments and what change, if any, was made to the Trust Agreement as a result.

6. The Use of 2010 United States Census Data

Comments: Several Tribes commented that the use of 2010 United States Census data did not accurately reflect the population of Indian Tribes, and asserted that U.S. Census data should be replaced by tribal census data for on-reservation tribal members. One commenter claimed that the Census did not accurately count tribal members because some members lived off the Tribe's reservation but in other Indian communities. This commenter suggested that self-reported tribal member populations could be added to the requirements in the Certification for Beneficiary Status form (Appendix D-3) that is submitted to the Court. One commenter proposed that Indian Tribes located near urban areas should be permitted to use population data from the U.S. Census for an adjacent Metropolitan Statistical Area. Some Tribes objected to the use of Census Table DP-1, explaining that Table DP-1 counted the total population, including Indian and non-Indian, located within a Tribe's jurisdictional area. Another Tribe expressed concern that the U.S. Census creates over-inclusive Indian Tribe populations in Oklahoma. This commenter asserted that because the Oklahoma Indian Tribes have no reservation land base and limited tribal trust lands, the Census population for those Oklahoma Tribes includes tribal members (and non-tribal member Indians) who do not live on Indian lands. Finally, the Cherokee Nation objected to the designation of the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") as an Indian Tribe aligned, together with the Cherokee Nation, to a single geographic area, the Cherokee Oklahoma Tribal Statistical Area ("OTSA"). According to the Cherokee Nation's comment letter, the UKB is a federally recognized band of Cherokee Indians that is headquartered within the OTSA, but the UKB does not exercise any governmental authority over any lands within the OTSA. The Cherokee Nation argued that Appendix D-8 should be amended to reflect that the UKB is unaffiliated with the OTSA and is a Group 1 Tribe.

Response: The United States agrees that the use of Census Table DP-1 is not appropriate for purposes of the Trust Agreement because Table DP-1 counted the total population, both Indian and non-Indian, within a specific census area. Instead, the hybrid allocation

formula incorporates population values from U.S. Census Table PCT4, which reported the total American Indian and Alaska Native population of American Indian and Alaska Native geographic census areas. The hybrid allocation formula uses population reported on Table PCT4 to identify the population of each Indian Tribe, and then applies the Jenks method to separate the Indian Tribes into three Jenks Groups. This information is compiled in the Alignment Table, Appendix D-8 to the Trust Agreement, which the Trustee will use to determine the pro rata population-based allocation in each funding cycle. Some commenters have expressed their concern about the use of any U.S. Census data. However, the published U.S. Census data represents a uniform, objective standard to serve as a benchmark for the population-based part of the hybrid allocation formula.

The United States declines to amend Appendix D-8 regarding the Cherokee Nation and the UKB. The UKB has not applied under the Trust Agreement to become a Beneficiary. In the future, the UKB may elect to become a Beneficiary and the Trustee may designate the UKB as a Beneficiary. If those two events occur, the Trustee, for purposes of the per capita allocation, will count the Cherokee Nation and the UKB as two separate Indian Tribes. The Cherokee Nation and the UKB are both aligned with a single geographic census area, the Cherokee OTSA, in the U.S. Census Table PCT4. For the pro rata population-based allocation portion of the hybrid allocation formula, the Trustee will allocate equal shares of the population-based allocation to the Cherokee Nation and UKB. After the Trustee provides notice of available funding to each Beneficiary, the Cherokee Nation and the UKB can choose to file separate funding requests or a joint funding request. Any Eligible Mitigation Actions undertaken by the Cherokee Nation and the UKB will provide community and air quality benefits to members of both Indian Tribes.

7. Banking Option

Comments: Several commenters supported the use of a banking option in the Trust Agreement, which would allow a Beneficiary to pool allocated funds from different funding cycles to complete an Eligible Mitigation Action project. One commenter proposed that either the Trustee could retain the banked amount in a separate sub-account and then disburse funds to the Beneficiary when the amount exceeded the necessary amount for the project, or the Beneficiary could hold the amount until it either uses the funds for an Eligible Mitigation Action or returns the funds to the Trust. A commenter stated that a Beneficiary should be permitted to receive partial funding for a project in one funding cycle, complete the project with other funding, and apply for the balance of costs in a future funding cycle. Two Tribes opposed the banking option due to the administrative duties and costs it would impose on the Trustee and Beneficiaries.

Response: After consultation with the Trustee, the United States believes that it would not be feasible for the Trustee to offer a banking option to Beneficiaries because of the added administrative burden and expense that it would impose on the Trust. Similarly,

the Trustee lacks the resources needed to properly monitor a program in which each Beneficiary could hold and accumulate funds. This option would impose a substantial administrative burden on the Trustee, requiring the oversight of up to 568 Indian Tribes to track unspent funds from year to year and to verify that funds were used for their intended purpose. Pursuant to the Trust Agreement, the Trustee is required to engage a professional Investment Manager to invest Trust funds in certain limited investments calculated to preserve the principal value. Unless each Beneficiary were held to the same investment standards for funds that the Beneficiary would hold, there is a greater risk that funds could be lost due to an inappropriate investment. Finally, the hybrid allocation formula in the modified Trust Agreement provides a guaranteed minimum allocation for a Beneficiary that will permit a Beneficiary to undertake a mitigation action. If a Beneficiary is concerned that its allocated amount will not be sufficient to fund a specific mitigation project that costs more than its allocation will cover, the Trust Agreement provides an alternative funding option: two or more participating Beneficiaries may choose to pool their allocated amounts and submit a joint request to fund a mitigation action using their combined allocation. *U.S. v. VW*, Dkt. No. 62 at 42-43, ¶5.2.13.

8. Funding Cycles

Comments: Commenters supported the postponement of the deadline for the second funding cycle to December 1 to allow Defendants to fully fund the Trust before the deadline for the second cycle. Commenters generally supported a reduction of funding cycles from the original six to a total of four or fewer. One commenter proposed that total Trust funds should be divided into four so that the amount of funding for all four funding cycles would be the same. One commenter opposed a reduction in the number of funding cycles, arguing that it may take some Tribes an additional amount of time to prepare a funding request.

Response: The modified Trust Agreement postpones the deadline for submitting a Certification for Beneficiary Status (Appendix D-3) from September 1 to December 1, 2018, which will increase the amount of funds available for distribution in the second funding cycle because Defendants will have fully funded the Trust Fund by December 1. It is not feasible to ensure equal funding in all four funding cycles because the Trust Fund will not be fully funded until the Defendants make their third and final Mitigation Trust Payment in November 2018. After the Trust Fund is fully funded, the amount available for distribution in funding cycles two through four will be approximately equal. The reduction of initial funding cycles from six to four results in increased funding for the second through fourth funding cycles and will put more of the Trust's funds to work sooner. As Indian Tribes requested during the consultation period, the Trust Agreement still sets aside funding for a technical assistance provider to assist Indian Tribes in preparing funding requests for any of the three remaining funding cycles.

9. Trustee's Determination of Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests

Comments: In general, commenters supported the requirement that a Beneficiary file a Designated Beneficiary's Participation Notice to indicate the Beneficiary's interest in participating in a given funding cycle. Two commenters opposed the concept of a Designated Beneficiary's Participation Notice, asserting that the Trust Agreement should also require a Beneficiary to have an approved Eligible Mitigation Action in order to participate in a funding cycle. One commenter also objected to separate deadlines for the Designated Beneficiary's Participation Notice and EMA Certification Form (Appendix D-4) because this approach could dilute the pool of funding available to Indian Tribes that have ready projects. One commenter proposed that the Trustee should be required to designate any Beneficiaries within two years, rather than permitting the Trustee to designate Beneficiaries in each of the first four funding cycles, noting that fewer Beneficiaries would mean less competition for Trust funding. The Institute for Tribal Environmental Professionals ("ITEP"), the technical assistance provider under the Trust Agreement, proposed that the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) should be extended by 30 days (e.g., from May 10, 2019 to June 10, 2019 for the second funding cycle) to allow a Beneficiary more time to inventory its equipment, solicit vendor quotes, and obtain Tribal Council approval. ITEP stated its concern that ITEP should not be placed at risk if the revised funding process does not work out as planned.

Response: The modified Trust Agreement sets specific deadlines for a Beneficiary to file a Certification for Beneficiary Status (Appendix D-3) for the second through fourth funding cycles. The United States believes that the imposition of a two-year deadline for the Trustee's designation of Beneficiaries is unwarranted and is inconsistent with the objective of allowing all Indian Tribes the opportunity to participate in the Indian Trust.

The requirement of submitting the Designated Beneficiary's Participation Notice simplifies the application process for Beneficiaries and the Trustee. Given this notice requirement, the Trustee will know the number of participating Beneficiaries in a funding cycle and can calculate the amount to allocate to each participant. Under the modified Trust Agreement, Beneficiaries are not required to submit funding requests until they know the amount of funding available to them. This preserves the resources of both Beneficiaries and the Trust.

The United States does not believe that the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) should be extended. Under the Trust Agreement, each Beneficiary is solely responsible for submitting all supporting information for its funding request in a timely manner. ITEP, the technical assistance provider, reviews a Beneficiary's funding request based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of information provided by an Indian Tribe without any further duty of inquiry.

U.S. v. VW, Dkt. No. 62 at 10-11, ¶2.1.1.2. When a Beneficiary chooses to submit a Designated Beneficiary's Participation Notice to the Trustee, the Beneficiary is indicating its interest in participating in that funding cycle. Given that important interest, the Beneficiary will be motivated to complete tasks relating to a funding request within the time period to submit an EMA Certification Form (Appendix D-4), and can start its planning process (e.g., inventory its equipment or solicit vendor quotes) before the commencement of the time period.

10. Eligible Mitigation Actions in Appendix D-2

Comments: Two commenters supported an expansion of the list of projects eligible for funding under Appendix D-2, stating that many of the projects in Appendix D-2 are too expensive for all but the most affluent Tribes. They provided examples of possible projects, including small wind energy projects to reduce dependence on diesel generators, diesel maintenance support, and two-cycle engine replacement. One commenter proposed limiting Trust funds to engine replacement only, not the entire vehicle, and would also limit eligible vehicles to post-1999 and pre-2007 to focus on trucks with greatest emissions. Another commenter asserted that a Beneficiary should not be required to apply for and receive an EPA DERA grant in order to qualify under option 10 of Appendix D-2.

Response: In its responses to comments to the Partial Consent Decree and to comments during the consultation process with Indian Tribes, the United States explained its position regarding the mitigation projects in Appendix D-2. *See, e.g., MDL Litigation*, Dkt. No. 1973-12 at 18; Mullaney Decl., ¶3, Exh. A at 1-2. That position remains unchanged and the United States does not believe that the list of Eligible Mitigation Action projects in Appendix D-2 needs to be modified. Since the DERA program was established in 2005, EPA has gained considerable experience in implementing NOx mitigation projects and has extensive knowledge about which types of projects are most cost-effective at reducing NOx from diesel engines. *Id.* at 2. Based on its experience, EPA concluded that the nine enumerated categories in Appendix D-2 include actions that have a proven track record, are cost effective, are relatively straightforward, and can be approved by the Trustee and implemented by Beneficiaries in an efficient and expeditious manner. *Id.* If a Beneficiary wants to fund a NOx mitigation project that does not fall within one of these nine categories, it may still apply under option 10 of Appendix D-2 to use Trust funds to pay for a non-federal voluntary match pursuant to a DERA tribal grant. *Id.* Furthermore, in the first funding cycle, 23 smaller Indian Tribes submitted a wide array of mitigation projects on their EMA Certification Forms (Appendix D-4) that met the requirements of Appendix D-2.

11. IITEP's Technical Revisions

Comments: IITEP, the technical assistance provider under the Trust Agreement, requested technical modifications to subparagraphs 2.1.1.2 (scope of tasks), 2.1.4 (Tribal Advisory

Council), and 5.2.16 (Eligible Mitigation Action approval procedure), and Paragraph 6.5 (modification). ITEP also proposed that the Trustee, together with ITEP, should be required to interact directly with the Tribal Advisory Council.

Response: The United States has considered these comments and, with the agreement of the parties to the Trust Agreement, has made the following changes to the Trust Agreement:

- In subparagraph 2.1.1.2 (Scope of Tasks), the following sentence was added: “The technical assistance provider’s report relating to its review of the EMA Certification Forms (Appendix D-4) shall be delivered to the Trustee three Business Days before the Trustee’s deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in subparagraph 5.2.16.”
- In subparagraph 2.1.4 (Tribal Advisory Council), the first sentence was modified, resulting in the following two sentences: “In comments received during the Consultation Process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and fund a Tribal Advisory Council. The Tribal Advisory Council shall: (1) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and (2) provide a forum for Indian Tribes to raise general questions relating to the Indian Tribe Trust Agreement.” Furthermore, the following two sentences were added: “The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider’s summary report may be submitted to the Trustee as a part of its regular semi-annual report to the Trustee pursuant to subparagraph 2.1.1.5.”
- Subparagraph 5.2.16 (Approval of Funding Request) was modified to add the following clarification: “provided that, if the Trustee requests a modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee’s request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust’s public-facing website a written determination either approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary.” The following sentence was deleted as redundant: “The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt.”
- In Paragraph 6.5 (Modification), the following sentence was added: “Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement

among the United States, the Trustee, and the technical assistance provider, as necessary to enable the Trustee and the technical assistance to effectuate the provisions of this Indian Tribe Mitigation Trust, and shall be filed with the Court.”

The United States does not agree with the proposal that the Trustee should be required to attend meetings of the Tribal Advisory Council. The technical assistance provider may invite the Trustee to attend the Tribal Advisory Council meetings. Moreover, subparagraph 2.1.4, as modified, requires the technical assistance provider to provide the Trustee with a summary report about the meetings.

12. Process Comments

Comments: The United States conducted a third discussion session with interested Indian Tribes on May 21, 2018, and set a deadline of July 2 for written comments. Three commenters expressed concern that United States filed the proposed modification to the Trust Agreement with the Court on June 21 before the comment period was completed on July 2 for the third discussion session, and asked whether written comments received by July 2 would be considered. Two commenters stated that the Trustee’s calculation of allocation benefits for the first funding cycle should be made public.

Response: In a letter to Tribal Leaders on May 10, 2018, the Office of Tribal Justice at the Department of Justice announced that it would conduct a third discussion session with Indian Tribes on May 21, and established a deadline for written comments of July 2, 2018. When the May 10 letter was sent, the United States anticipated that it could lodge proposed modifications to the Trust Agreement by June 1, 2018. *U.S. v. VW*, Dkt. No. 56 at 3. In light of comments received during the May 21 discussion session, the United States informed the Court on June 1 that it would work with the Trustee to revise the Trust Agreement to reflect some proposed modifications, and stated that it expected the process to be completed by June 22. *Id.*, Dkt. No. 58 at 3. The United States filed the proposed modifications to the Trust Agreement on June 21, 2018, and stated that it would provide an additional 30-day period for comments from Beneficiaries and potential Beneficiaries. *Id.*, Dkt. No. 62 at 2. In this response to comments, the United States has considered and responded to written comments received from all three discussion sessions and from the 30-day comment period following the lodging of the proposed modifications to the Trust Agreement, including a comment received after the close of the comment period.

The United States and the Trustee agree that the Trustee’s calculation of allocation benefits for the first funding cycle should be made public. This information is attached as Exhibit B to the Declaration of David A. Vanaskey, Jr., on Behalf of

Wilmington Trust, N.A., as Trustee, in Support of the United States' Request for Court Approval of the Modifications to the Indian Tribe Trust Agreement.⁵

⁵ The Vanaskey Declaration is attached to the U.S. Request for Court Approval of Modifications as Attachment F.

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ATTACHMENT E

Declaration of Robert Mullaney in Support of United States' Request for Court Approval of Modifications to the Indian Tribe Trust Agreement

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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 CRB (JSC)
MARKETING, SALES PRACTICES, AND)
17 PRODUCTS LIABILITY LITIGATION) **DECLARATION OF ROBERT MULLANEY**
18) **IN SUPPORT OF UNITED STATES’**
19) **REQUEST FOR COURT APPROVAL OF**
20) **MODIFICATIONS TO INDIAN TRIBE**
21) **TRUST AGREEMENT**

22 This Document Relates to:)
23)
24 *United States v. Volkswagen AG et al.*,)
Case No. 16-cv-295 (N.D. Cal.))
25)
26)
27)
28)

1 I, Robert Mullaney, declare as follows:

2 1. I am a senior counsel in the Environmental Enforcement Section of the U.S. Department
3 of Justice. I am licensed to practice in the State of California and I am one of the attorneys representing
4 the United States in this matter.

5 2. I submit this Declaration in support of the United States' request for Court approval of
6 modifications to the Indian Tribe Trust Agreement.

7 3. Attached hereto as Exhibit A is a true and correct copy of the final report of the United
8 States' Response to Tribal Consultation that was released in October 2017. The final report can be
9 found under the heading of "Consultation on Distribution of Volkswagen Settlement Trust" at the
10 following link: <https://www.justice.gov/tribal/tribal-consultations-advisory-groups>.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on August 14, 2018.

13
14 *s/ Robert Mullaney*

15 Robert Mullaney
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EXHIBIT A

United States' Response to Tribal Consultation (October 2017)

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U.S. Department of Justice

Office of Tribal Justice

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In July of 2016, the Department of Justice and the Environmental Protection Agency invited federally-recognized tribal governments to consult on the process for distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust established under the settlement of *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*. The government-to-government consultation was initiated to consult on determining a method for allocating annual funding in the Tribal Allocation Subaccount for Eligible Mitigation Actions for projects on Indian land and providing technical assistance to tribes. Telephonic consultations were held on August 8, 10, and 15 in 2016. In addition to the telephonic consultation, written comments were accepted until the end of the 60-day consultation period (August 27, 2016) established in the consent decree. The results of this consultation are as follows:

Response to Tribal Consultation

1. Request for a Separate Tribal Trustee or a Tribal Advisory Council to Consult with the Trustee on Administration and Distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust. Many of the Tribes or tribal-affiliated organizations requested a designated tribal trustee who is separate from the at-large trustee, or alternatively that the Trustee should be directed to appoint and support a Tribal Advisory Council to assist the Trustee in evaluating tribal funding requests.

Response: During negotiations with the trustee, the parties decided to establish two trusts: (1) an Environmental Mitigation Trust for State Beneficiaries ("State Mitigation Trust"); and (2) an Environmental Mitigation Trust for Indian Tribe Beneficiaries ("Indian Tribe Mitigation Trust"). Pursuant to the terms of the Indian Tribe Trust Agreement (the "Trust Agreement"), the trustee will set aside \$30,000 of the administrative cost subaccount to support the formation of a Tribal Advisory Council to advise the Trustee in evaluating tribal funding requests. Based on specific comments received during the consultation, the United States recognizes that the tribes have expressed a preference for the Institute for Tribal Environmental Professionals ("ITEP") to be the catalyst in forming this advisory council. In the Trust Agreement, the trustee agreed to select ITEP to serve this function. If a Tribal Advisory Council is formed, it should include representatives from all regions, including Alaska, and from small and large Tribes to ensure a balanced approach.

2. Allowable Mitigation Projects. The Consent Decree requires VW to establish and fund an Environmental Mitigation Trust and a Tribal Allocation Subaccount to be used by Tribal

Beneficiaries to implement NOx reduction projects to mitigate the excess tons of NOx emitted by the violating Volkswagen 2.0 Liter and 3.0 Liter vehicles (“Subject Vehicles”). The United States received a number of comments asking that the list of eligible mitigation projects be expanded.

Response: Appendix D of the Consent Decree allows Beneficiaries to use Trust funds to implement NOx reduction projects that fall within nine enumerated categories of Eligible Mitigation Actions, as well as to use Trust funds for their nonfederal match or voluntary match under EPA’s Diesel Emission Reduction Act (“DERA”) program for projects that are not included in the nine specifically enumerated categories (known as “Option 10”). *See* Consent Decree Appendix D-2. Since the DERA program was established in 2005, EPA has gained considerable experience in implementing NOx mitigation projects and has extensive knowledge about which types of projects are most cost-effective at reducing NOx from diesel emissions. Based on its experience, EPA concluded that the nine enumerated categories include actions that have a proven track record, are cost-effective, are relatively straightforward, and can be approved by the Trustee and implemented by state and tribal Beneficiaries in an efficient and expeditious manner. By limiting the Trust to a defined set of proven and cost-effective projects, the Trust allows Beneficiaries flexibility to implement a range of projects within their jurisdiction, while still ensuring that the Trust is most effective at accomplishing its goal of fully mitigating the excess NOx attributable to the Subject Vehicles. In addition, to the extent that a Beneficiary wishes to fund a specific NOx mitigation project that does not fall within one of the enumerated categories, it may still apply, under Option 10, to use Trust funds to pay for its non-federal voluntary match pursuant to a DERA grant. However, Trust funds shall not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

3. Compatibility with DERA Program. Some Tribes and Tribal organizations commented that the “DERA Option” included in Appendix D-2 is problematic because DERA receives its funding from Congress, and Beneficiaries cannot rely on DERA receiving appropriated funds every year. They also raised a concern that the certification and reporting requirements under the Trust are different from or inconsistent with DERA.

Response: The DERA Option for any given year is dependent upon an appropriation for the Diesel Emissions Reduction Act for that year. If there is no appropriation, Beneficiaries may not choose the DERA Option. In that case, Beneficiaries should choose projects from Eligible Mitigation Actions 1-9.

Tribes wishing to participate in the DERA Option will submit a Notice of Intent to Participate to the Trustee to reserve Trust funds. Then they will submit their DERA proposal to EPA. If their proposal is selected for funding, the Trust funds they reserved will be available as their non-federal voluntary match. Tribes do not need to submit anything under the DERA state program.

A Beneficiary that chooses the DERA Option must submit DERA Quarterly Programmatic Reports and a Final DERA Programmatic Report to EPA as required under

the DERA grant terms and conditions. A Beneficiary may submit its DERA reports to the Trustee to fulfill its reporting requirements for any portion of its Trust funds under the DERA option.

The DERA Option provides Beneficiaries with additional project options if Eligible Mitigation Actions 1-9 do not align with their fleets or needs. The DERA Option for the Tribes limits project eligibility to those projects that are listed as eligible in the DERA Tribal Request for Proposals (“RFP”). Projects listed in Eligible Mitigation Actions 1-9 and the DERA program are eligible for Trust funds because they are proven methods to reduce NOx. Tribes should review the DERA RFP for project eligibility.

4. Administrative Costs Associated with the Tribal Allocation Subaccount. Tribes and Tribal organizations requested that no more than 2.5% of the Tribal Allocation Subaccount be used for Trustee administrative costs.

Response: Subparagraph 2.1.3.2 of the Trust Agreement establishes a Tribal Administration Cost Subaccount, which is separate from the Tribal Allocation Subaccount. The Trust’s expenses relating to administering the Tribal Allocation Subaccount are taken from the Tribal Administration Cost Subaccount; the Trust’s administrative costs are not taken from the Tribal Allocation Subaccount, which is used instead to fund Eligible Mitigation Actions, Eligible Mitigation Action Expenditures, and technical assistance, as described in subparagraph 2.1.1 of the Trust Agreement. Pursuant to Paragraph 5.2 of the Trust Agreement, Beneficiaries that submit a funding request to the Trustee are required to include a project management plan for the proposed Eligible Mitigation Action, including a detailed budget and implementation and expenditure timeline. As explained in Appendix D-2 under “Eligible Mitigation Action Administrative Expenditures”, Beneficiaries may use Trust Funds for actual administrative expenditures associated with implementing such Eligible Mitigation Action, but not to exceed 15% of the total cost of such Eligible Mitigation Action. These administrative expenditures include the costs of professional services and contracts for consulting services. The allocation for these purposes reflects the importance of attention to administration, record-keeping and transparency by the Beneficiaries, and should allow for adequate personnel in that regard.

5. Distribution of the Tribal Allocation Subaccount. Some Tribes and Tribal organizations objected to what they described as a “first come, first serve” basis of distributing the Tribal Allocation Subaccount. Others commented that Paragraph 5.0.5.2.3 of Appendix D, which is triggered by the amount of funding requests exceeding the amount of funds available in a given year, was an unnecessary administrative provision that penalizes those committed to instituting Eligible Mitigation Actions. They argue that this could lead to some tribes working together to circumvent or interfere with another Tribe’s access to the allocation and argue that the Trustee should be able to determine how to allocate the funds if a particular year is oversubscribed. Tribes and Tribal Organizations also requested an expansion in the number of funding years for the Tribal Allocation Subaccount, but one Tribe requested a reduction in the number of years. One Tribe also requested there be no or low minimum project dollar amounts. Finally, Tribes and Tribal Organizations requested that the United States eliminate the reversion

of the Tribal Allocation Subaccount funds back into the general fund at the end of the six-year funding cycle.

Response: The formula set forth in Paragraph 5.0.5.2.1 allows for the equal distribution of the funds across multi-year funding cycles. This general approach balances the feedback received from Tribes to ensure (a) funding for Tribes and Tribal projects that are prepared to begin immediately, and (b) the availability of funds in later years for Tribes who may need additional time in preparing and submitting their projects and funding requests. In that sense, it is not truly a “first come, first serve” process for the first six years of funding. In EPA’s experience administering the Tribal DERA program, the amount of funds available in each year should be sufficient to fund a majority of the requests in a given year. In response to comments, the United States agrees that the six-year funding window for the Tribal Allocation Subaccount should be expanded to ten years for it to be commensurate with the amount of time the States have to request funding for eligible mitigation projects in Appendix D. Accordingly, the Indian Tribe Mitigation Trust now provides for a ten-year funding period. Subparagraph 5.0.5.2.1 sets forth an initial six-year funding cycle. If any funds remain in the Tribal Allocation Subaccount after this six-year period, Indian Tribe Beneficiaries may apply for additional funding in year seven. However, after the first seven years of the funding cycles, any remaining funds will be available for the remaining years on a “first come, first serve” basis. The expansion of the funding cycle years should also result in no Tribal Allocation Subaccount funds reverting to the trust.

In a July 8, 2017, letter sent in response to the National Tribal Air Association’s questions regarding the VW Settlement, the United States explained the process that results if a particular year is oversubscribed. Here is that response:

If a Tribe applies for funding for an eligible mitigation action (“EMA”) and the particular year that the Tribe has applied for is oversubscribed, then the Trustee will allocate the available funds for that year by prorating it based on the census population data for each Tribe. For example, if the total amount available for a particular year is \$1,000,000 and five Tribes with a combined population of 1,000,000 apply for EMA funding in excess of the \$1,000,000, the Trustee will distribute the \$1,000,000 as follows:

| Tribe | Population |
|---------|-----------------|
| Tribe A | 400,000 (40%) |
| Tribe B | 200,000 (20%) |
| Tribe C | 50,000 (5%) |
| Tribe D | 75,000 (7.5%) |
| Tribe E | 275,000 (27.5%) |
| Total | 1,000,000 |

| Tribe | Allocation |
|---------|-------------------|
| Tribe A | \$400,000 (40%) |
| Tribe B | \$200,000 (20%) |
| Tribe C | \$50,000 (5%) |
| Tribe D | \$75,000 (7.5%) |
| Tribe E | \$275,000 (27.5%) |
| Total | \$1,000,000 |

In the event that a Tribal submission does not meet the administrative or technical requirements for funding or if the Trustee needs additional information from the particular Tribe, the Trustee will notify the Tribe. If the Trustee needs additional information, the Tribe will need to provide that information for the project to be eligible for funding. If the Tribal funding request is for a project that is not an EMA, the Tribe will have the opportunity to apply for projects that meet EMA requirements in subsequent years.

6. Technical Assistance. Paragraph 2.1.1 of the Trust Agreement provides that up to 5% of the Tribal Allocation Subaccount may be used for technical assistance to enable tribes to prepare funding requests for Eligible Mitigation Actions. The Tribes and Tribal Organizations had several comments on the technical assistance funding that will be provided to the Tribes. Some advocated for a smaller amount for technical assistance, while others argued that the percentage for technical assistance should be flexible or increased. Tribes and Tribal Organizations also requested that the indirect costs (administrative overhead) associated with administering the technical assistance be capped, for example at 25% of overall technical assistance funding, so that a greater amount of direct funding is used to support technical assistance for Tribes. One Tribe also requested that the legal costs for preparation of documents related to becoming a beneficiary be covered. The Tribes also identified ITEP as a technical assistance provider, as it is equipped to provide assistance, training, and outreach to the Tribes, with the possible exception of Alaska and some rural areas that may need special local expertise. Tribes also requested that some templates for required documents be produced by whatever organization provides the technical assistance. The National Tribal Air Association (NTAA) expressed the concern that perhaps there should be a sliding scale for the distribution of the technical assistance funding as it would be unfortunate if most of the technical assistance money is used immediately and there were not additional funds for a Tribe that applied in a later year.

Response: The 5% set aside for technical assistance funding in Paragraph 2.1.1 of the Trust Agreement is based on EPA's work with Tribes that have applied to the DERA program. When Tribes apply to the DERA program, EPA provides the technical assistance. Based on EPA's years of experience of administering the Tribal DERA program and providing technical assistance, the 5% cap provides sufficient funding for technical assistance for all Tribes interested in becoming beneficiaries.

In response to comments, the United States recognizes that the tribes have expressed a preference for ITEP as a technical assistance provider. In the Trust Agreement, the trustee agreed to select ITEP to serve as the technical assistance provider. The United States encourages the technical assistance provider to assist Tribes in preparing the

certification of beneficiary status and funding requests under the Trust Agreement, which would reduce the need for legal assistance to prepare documents. The United States understands that there may need to be additional technical assistance providers for Alaska and rural areas with unique needs and encourages the technical assistance provider to work with regional organization(s) as possible to provide that assistance. In response to the NTAA's concern about the technical assistance funding running out before the final cycle of funding, it is certainly a possibility that the technical assistance funds could be used up before the last funding cycle, but it is also a possibility that there will be technical assistance funds remaining that do not get used. Providing technical assistance funding on a sliding scale will not ensure that all of the technical assistance funding gets used or that the Tribes requesting technical assistance early in the process receive adequate assistance.

In response to the comment about administrative overhead costs, the Trust Agreement caps the indirect costs (administrative overhead) associated with administering the technical assistance at 30.9% of overall technical assistance. In each budget submitted for funding, ITEP is required to certify that its indirect costs comply with that limit.

7. EV Charging Infrastructure. Similar to public comments received on the Partial Consent Decree, the Tribes argued that the 15% cap on allocating funds toward electric vehicle ("EV") charging infrastructure projects should be removed (i.e., Beneficiaries should be allowed to spend a greater share of their allocation on EV charging).

Response: Light duty EV charging infrastructure promotes greater use of zero emission vehicles which, in turn, leads to a general reduction in NOx emissions from mobile sources. By allowing Trust funds to be used for EV charging infrastructure in addition to the other categories of projects, Appendix D allows Beneficiaries to choose from a wide range of projects that address both heavy duty and light duty vehicles. On the other hand, EV charging infrastructure projects are aimed at reducing emissions from lower-emitting sources. By limiting the amount of funds that can be spent on EV charging infrastructure, Appendix D ensures that sufficient funds are available to pay for projects that better address higher-emitting sources such as those targeted in Eligible Mitigation Actions 1-8.

In addition, Appendix C requires Volkswagen to invest \$2 billion to advance ZEV and ZEV infrastructure. As part of that process, Volkswagen is required to provide notice and opportunities for stakeholders to provide suggestions, observations, and offers of assistance or support for potential ZEV investments that it may make under its National ZEV Investment Plans (*see* National Outreach Plan description in Paragraph 2.3 of Appendix C). Volkswagen must provide reasonable notice of these opportunities on VW.com and VWCourtSettlement.com, and in fact did so for the first of four 30-month investment cycles. Tribes interested in learning more about this process for stakeholder comment pertaining to future investment cycles should visit these websites. Appendix C also includes significant investment in light duty charging infrastructure, although those investments may not be located in every state, tribe, or territory. Appendix C investments may also not be the same type of investment that interest a state, tribe, or territory. Thus,

Beneficiaries may use 15% of an Appendix D allocation to fund charging infrastructure projects.

8. Coordination Between Tribes and States on Projects. One Tribe suggested that the impact of the Partial Consent Decree could be maximized if the Tribes and states coordinated on projects.

Response: Nothing in the Partial Consent Decree prevents the Tribes and states from coordinating on projects to maximize the benefits. All beneficiaries (except for Tribes) must create a Beneficiary Mitigation Plan that summarizes how the beneficiary intends to use its allotted funds. The plan must address a number of factors, including for example, the expected emission benefits, and how the beneficiary will seek and consider public comments as described in Paragraph 4.1 of Appendix D. Beneficiaries have discretion in how they seek and consider public input on their Beneficiary Mitigation Plans; however, the plans must explain the process for public input. In addition to liaising with the states directly, through the public input process Tribes can provide input to the states on ideas for maximizing the benefits of the Mitigation Trust.

9. Objections to the Methodology Used for the Trust Mitigation Account Allocations. One Tribe commented that using the number of registered Subject Vehicles leads to a distorted view of the impact of the NO_x emission on Indian country. As the Tribe pointed out, many reservations are near major tourist attractions and receive significant highway traffic. Highway traffic reports might be a better indicator of exposure to NO_x emissions from the Subject Vehicles.

Response: The Mitigation Trust Fund is intended to fund NO_x reduction projects where the Subject Vehicles were, are or will be operated. While highway traffic reports might provide an indicator of high traffic areas generally, they would not necessarily provide any data on the number of Subject Vehicles that are contributing to that traffic.

10. Objections to the “Finalization of Trust Agreement” Provision in the Consent Decree. Tribes and Tribal organizations objected to Paragraph 16 of the Consent Decree (described in several Tribal comments as “Section 17”) as it does not include Tribes in the process for finalizing the Trust Agreement after Trustee selection.

Response: Comments on the terms of the Consent Decree were handled through a separate process and the United States has already responded to timely public comments received. Paragraph 16 of the Consent Decree is limited to the United States, California, the entities (other than Indian Tribes) in Appendix D-1, and the Settling Defendants. After the Court appointed a Trustee, those parties worked with the Trustee to finalize the two Trust Agreements and to modify terms of the agreements as necessary for administration of the Trusts. Through the consultation process pursuant to Paragraph 2.1.1. of Appendix D of the Decree, however, the United States has responded to comments of the interested federally-recognized Indian tribes and negotiated with the trustee, the States, and the Settling Defendants to modify Appendix D in the process of finalizing the Indian Tribe Trust Agreement to address some of these concerns.

11. Special Considerations. One Tribe argued that special consideration should be made for its unique location between two air sheds and close to the United States-Mexico border. In addition, some Tribes and Tribal Organizations argued that the Alaska Native villages should receive special consideration regarding technical assistance due to their remoteness and unique challenges facing the villages. One Tribe also requested funding for information and training sessions for tribal citizens regarding the Partial Consent Decree.

Response: It is important to note that the Trust Agreement is structured such that the Trustee does not exercise discretion in choosing which funding requests to approve as long as the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 of the Decree and furthers the purpose of the Trust.

The organization that administers the technical assistance funding for the Tribes should take into consideration the unique circumstances of the Alaska Native villages and consider providing a sub-grant to an organization willing to provide the additional technical assistance to the villages.

Funds from the Tribal Allocation Subaccount are not for educational purposes, but to mitigate the NOx emissions resulting from the Subject Vehicles.

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Mitigation Trust for Indian Tribe Beneficiaries*
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

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12 IN RE: VOLKSWAGEN "CLEAN DIESEL") MDL No. 2672 (CRB) (JSC)
MARKETING, SALES PRACTICES, AND)
13 PRODUCTS LIABILITY LITIGATION) **DECLARATION OF DAVID A.**
14) **VANASKEY, JR., ON BEHALF OF**
15) **WILMINGTON TRUST, N.A.,**
16) **AS TRUSTEE, IN SUPPORT OF**
17) **THE UNITED STATES' REQUEST**
18) **FOR COURT APPROVAL OF**
19) **MODIFICATIONS TO**
This Document Relates to:) **THE INDIAN TRIBE TRUST AGREEMENT**
20) Date: To be determined
21) Time: To be determined
22) Courtroom 6, 17th Floor
23) The Honorable Charles R. Breyer
24
25
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1 I, David A. Vanaskey, Jr., hereby declare:

2 1. I am an Administrative Vice President covering the Large and Complex Trust product
3 in the Corporate Trust Department of Wilmington Trust, N.A. I have held this position since 2017 and
4 I have been working in the Corporate Trust Department of Wilmington Trust, N.A. for over 30 years.
5 Wilmington Trust, N.A. has been appointed as Trustee (the "Trustee") of the Volkswagen Diesel
6 Emissions Environmental Mitigation Trust For Indian Tribes by Order of the Court dated March 15,
7 2017, in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*
8 *Litigation*, MDL No. 2672 (CRB) (JSC), Dkt. No. 3030. I am responsible for overseeing the
9 administration of the Trust Agreement on behalf of Wilmington Trust, N.A. in its capacity as Trustee.¹

10 2. To effectuate the terms of the Court Order dated March 15, 2017, the parties entered
11 into a written trust agreement which was approved by Order of the Court on September 19, 2017, in
12 *United States of America v. Volkswagen AG, et al.*, Civil Action No. 3:16-cv-00295-CRB (the
13 "Government Action"), Dkt. No. 49. The fully executed final version of the written trust agreement
14 was filed on October 2, 2017. Government Action, Dkt. No. 51-2 (the "Original Trust Agreement").
15 The United States lodged proposed modifications to the Original Trust Agreement with the Court on
16 June 21, 2018. Government Action, Dkt. No. 62. The United States subsequently filed a proposed
17 modified Original Trust Agreement ("Modified Trust Agreement") for the Court's approval as
18 Attachment A to the United States' Notice. Both the Original Trust Agreement and the Modified Trust
19 Agreement are hereinafter collectively referred to as the "Trust Agreement."

20 3. I am familiar with the Trust Agreement, the day-to-day operations of the Trust created
21 thereunder, and the requirements in the Trust Agreement including, without limitation, those in
22 Section IV (Indian Tribe Mitigation Trust Beneficiaries) relating to becoming a designated
23 Beneficiary, and those in Section V (Distribution of Indian Tribe Mitigation Trust Assets) relating to
24 the distribution of Trust Assets, each as set forth in the Original Trust Agreement. Capitalized terms
25 not otherwise defined in this Declaration have the meaning ascribed to them in the Original Trust
26 Agreement or the Modified Trust Agreement, as applicable.

27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the Trustee respectfully requests that this Court take judicial
28 notice of the pleadings in the public record referenced in this declaration.

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1 4. I am charged with the maintenance of the Trust Agreement, the Trust created
2 thereunder, and the other documentation maintained by the Trustee in the ordinary course of its
3 business relating to its administration of the Trust. This Declaration is based upon my review of the
4 Trust records relating to the Trust Agreement at issue in the above-captioned matter, my familiarity
5 with the Trustee’s practices and procedures, and my involvement with the transactions discussed
6 herein.

7 **I. Available Amount of Funds for the First Funding Cycle.**

8 5. In accordance with subparagraph 5.0.5.2.1 of the Original Trust Agreement, the total
9 amount of trust assets the Trustee may distribute in the first funding cycle is one-sixth of the remaining
10 assets in the Tribal Allocation Subaccount.

11 6. At the time of the first funding cycle, the Indian Tribe Trust was not fully funded. As of
12 December 31, 2017, the “remaining assets” in the Tribal Allocation Subaccount equaled
13 \$36,121,925.70. One-sixth of that balance, or the amount available for distribution, equals
14 \$6,020,321.00.

15 7. The “remaining asset” balance appears on the bank account statement for the Tribal
16 Allocation Subaccount. A true and admissible copy of the bank account statement is attached hereto as
17 Exhibit A.

18 **II. The Original Allocation Formula in Subparagraph 5.0.2.3 of the Original Trust**
19 **Agreement.**

20 8. In accordance with the requirements of subparagraph 5.2.16 of the Original Trust
21 Agreement, the Trustee received \$33,040,029.20 in Appendix D-4 funding requests (each an “EMA
22 Certification and Funding Request”) by the deadline for the first funding cycle. That amount included
23 a Beneficiary Tribe requesting a DERA matching funds award of \$2,200,000.00 from the Trust. By the
24 time of the deadline for the Trustee to approve or deny the EMA Certification and Funding Requests,
25 the U.S. Environmental Protection Agency (“EPA”) had informed the Trustee that EPA already
26 denied the Tribe’s related DERA grant request, which would disqualify the Tribe for DERA matching
27 funds from the Trust. EPA also informed the Trustee that there was a DERA dispute process between
28

1 EPA and the Tribe which had not been completed, so this Tribe's EMA Certification and Funding
2 Request remained in the process. EPA ultimately did not approve the Tribe's DERA grant and it was
3 not successfully challenged as of the date hereof. Due to an exceptionally short first funding cycle
4 deadline, the EMA Certification and Funding Requests were being corrected and completed with
5 necessary information right up to the deadline of March 5, 2018, for the Trustee to approve or deny the
6 EMA Certification and Funding Requests. In light of the tight deadline and the uncertainty relating to
7 the final amount of approvable EMA Certification and Funding Requests for the first funding cycle,
8 the Trustee ran a preliminary test to implement allocation of the "remaining assets in the Tribal
9 Allocation Subaccount" in accordance with subparagraph 5.0.5.2.3 while waiting to receive the final
10 report on "approvable funding requests" from the technical assistance provider that was completing its
11 review of EMA Certification and Funding Requests. This preliminary test included the \$2.2 million
12 amount being requested as a DERA matching funds award as described above. The Trustee ran a
13 preliminary test using the allocation formula for an "oversubscribed cycle" as set forth in
14 subparagraph 5.0.5.2.3 of the Original Trust Agreement.

15 9. The Trustee did not participate in the creation of the allocation formula for an
16 over-subscribed funding cycle in the Original Trust Agreement. The allocation formula for an
17 over-subscribed cycle was presented as part of the Original Trust Agreement resulting from a prior
18 consultation period conducted by the United States with the Indian Tribes. This allocation formula is
19 also described and illustrated in the October 2017 United States' Response to Tribal Consultation.

20 10. When the Trustee tested the allocation formula for an oversubscription with respect to
21 the Beneficiaries that met the deadlines for the first funding cycle and submitted a EMA Certification
22 and Funding Request, the preliminary test showed that of the 27 Beneficiaries that submitted EMA
23 Certification and Funding Requests, 7 of the Beneficiaries would receive less than \$1,000, ranging
24 from \$192.83 to \$ 459.52. At the other end of the spectrum, only two of the Beneficiaries would
25 receive the full amount of Trust Assets they requested on their EMA Certification and Funding
26 Requests, while one Beneficiary would receive more than it requested. A true and admissible copy of

1 the results of the preliminary test of the initial allocation under the allocation formula in the Original
2 Trust Agreement is attached hereto as Exhibit B.

3 11. Subparagraph 3.1.2.9 states that one of the responsibilities of the Trustee is to:
4 “distribute Trust Assets for the purposes contemplated in this Indian Tribe Trust and the Consent
5 Decree, including distribution of funds to Beneficiaries for approved Eligible Mitigation Actions”.
6 Under the Original Trust Agreement, the “oversubscription allocation method” amount would not
7 match the approved Eligible Mitigation Action submitted on the Beneficiary’s corresponding EMA
8 Certification and Funding Request. The EMA Certification and Funding Request is the evidence that
9 the Trustee is required to collect from Beneficiaries to support a distribution of Trust Assets so they
10 must match.

11 12. Section V (Distribution of Indian Tribe Mitigation Trust Assets) of the Original Trust
12 Agreement and the EMA Certification and Funding Requests also impose duties on the Beneficiaries
13 to ensure that Trust Assets are used in accordance with the terms of the Trust Agreement. These
14 certifications made by the Beneficiaries in their EMA Certification and Funding Requests are intended
15 to act as a Beneficiary “self-monitoring system”. These certifications also relate to the Beneficiaries’
16 duty to report on their use of Trust Assets in Paragraph 5.3 of the Trust Agreement. Therefore a
17 misalignment of these certifications with the actual Trust Assets distributed is inconsistent with the
18 Trust Agreement.

19 13. The Trustee notified the United States of the results of the preliminary test of the
20 oversubscription allocation formula and the misalignment of the allocation method in subparagraph
21 5.0.5.2.3 with the EMA Certification and Funding Requests.

22 14. The Trustee never prepared or published a final allocation using the allocation method
23 in subparagraph 5.0.5.2.3 of the Original Trust Agreement due to the stay imposed in the March 2,
24 2018 Court Order.

1 **III. Initial Calculation of Allocation of Trust Funds to the Beneficiaries in the First**
2 **Funding Cycle under the proposed allocation formula in the Modified Trust**
3 **Agreement.**

4 15. In accordance with the March 2, 2018 Court Order, the Trustee worked with the United
5 States to ensure that the Modified Trust Agreement would work and could be implemented from a
6 mechanical standpoint. The Trustee also worked with the United States to ensure that the Modified
7 Trust Agreement would address the misalignment of the EMA Certification and Funding Requests
8 with the amount to be distributed. The Trustee tested the new allocation formula, as directed by the
9 United States, to help the United States determine whether the new allocation formula would result in
10 awards that would provide sufficient funds for all Beneficiaries that submitted an approvable funding
11 request to be able to complete an Eligible Mitigation Action in accordance with Appendix D-2. These
12 tests included, among other things, a re-allocation of the EMA Certification and Funding Requests
13 submitted in the first funding cycle using the new allocation formula in the modified Trust Agreement
14 as a comparison for illustration purposes only. Under the Modified Trust Agreement, each
15 Beneficiary that met the deadlines and submitted an approvable EMA Certification and Funding
16 Request will have another opportunity to submit a new EMA Certification and Funding Request to
17 match its actual allocation under the new allocation formula. A true and admissible copy of that initial
18 allocation of the Trust assets in the first funding cycle based on the new allocation formula in the
19 Modified Trust Agreement is attached hereto as Exhibit C.

20 **IV. Test Showing Hypothetical Allocation Permutations using the proposed**
21 **allocation formula in the Modified Trust Agreement**

22 16. At the direction of the United States, the Trustee created a table to illustrate how the
23 allocation formula in the Modified Trust Agreement might work over a range of permutations. The
24 results of the hypothetical allocations for each of four funding cycles, using the proposed allocation
25 formula in the Modified Trust Agreement, are shown in the table attached hereto as Exhibit D. The
26 figures used in the table are for comparative and illustrative purposes only, and are **not** intended to be
27 guaranteed amounts or outcomes for any funding cycle. The actual figures determined by the Trustee
28 for each funding cycle will depend on a number of currently unknown factors, including, without

1 limitation, the actual remaining available assets for each cycle, the actual number of participating
2 Beneficiaries in each cycle, and the mix of participating Beneficiaries in each cycle.

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1 Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the facts set forth in the
2 foregoing declaration are true and correct to the best of my knowledge, information, and belief.

3 Dated: August 14, 2018



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6 David A. Vanaskey, Jr.
7 Administrative Vice President
8 Wilmington Trust, N.A., Trustee for the
9 Volkswagen Diesel Emissions Environmental
10 Mitigation Trust for Indian Tribe Beneficiaries

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Exhibit A

Available Amount Of Funds For The First Funding Cycle



Relationship Summary

██████████ VW TRUST-TRIBAL ALLOCATION SUBACCT
As of December 31, 2017

CONTACTS

Private Client Advisor:
Investment Advisor:

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Summary of Investments

WV TRUST - TRIBAL ALLOCATION SUBACCT
 As of December 31, 2017

| INVESTMENT CATEGORY | MARKET VALUE (M/V) As of 11/30/2017 | % OF M/V | MARKET VALUE (M/V) As of 12/31/2017 | % OF M/V |
|---|--|---------------|--|---------------|
| PRINCIPAL PORTFOLIO(S) | | | | |
| Cash & Currency | \$1,514.37 | 0.00 | \$80,354.57 | 0.22 |
| Taxable Money Mkt Funds | 36,055,343.04 | 100.00 | 35,976,502.84 | 99.78 |
| U.S. Treasury Bills | | | 36,056,857.41 | 100.00 |
| TOTAL Cash & Currency | 36,056,857.41 | 100.00 | 36,056,857.41 | 100.00 |
| TOTAL PRINCIPAL PORTFOLIO(S) | | | | |
| ACCRUED INCOME | 23,158.82 | | 52,247.19 | |
| MARKET VALUE WITH ACCRUED INCOME | 36,080,016.23 | | 36,109,104.60 | |
| INCOME PORTFOLIO(S) | | | | |
| Cash & Currency | 7,538.78 | 100.00 | 12,821.10 | 100.00 |
| Uninvested Cash | 7,538.78 | 100.00 | 12,821.10 | 100.00 |
| TOTAL Cash & Currency | 7,538.78 | 100.00 | 12,821.10 | 100.00 |
| TOTAL INCOME PORTFOLIO(S) | | | | |
| ACCRUED INCOME | 36,064,396.19 | | 36,069,678.51 | |
| MARKET VALUE WITH ACCRUED INCOME | 36,087,555.01 | | 36,121,925.70 | |
| GRAND TOTAL(S) | | | | |
| ACCRUED INCOME | 23,158.82 | | 52,247.19 | |
| MARKET VALUE WITH ACCRUED INCOME | 36,087,555.01 | | 36,121,925.70 | |

Exhibit B

The Original Allocation Formula In Subparagraph 5.0.5.2.3 Of The Original Trust Agreement

February 28, 2018

Table 1. VW Tribal Trust Funding Cycle 1, Preliminary Test

| No. | Beneficiary Name | Final Amount Requested | Final Allocation | % of Final Allocation Relative to Final Amount Requested |
|-----|---|------------------------|-----------------------|--|
| 1 | Beaver Village | \$68,348.00 | \$344.64 | 0.504244% |
| 2 | Bishop Paiute Tribe | \$76,810.80 | \$6,515.35 | 8.482338% |
| 3 | Blue Lake Rancheria | \$446,200.00 | \$237.97 | 0.053332% |
| 4 | Cherokee Nation | \$3,988,396.60 | \$2,072,033.57 | 51.951543% |
| 5 | Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD | \$1,198,977.40 | \$33,192.19 | 2.768375% |
| 6 | Chickasaw Nation (The) | \$479,250.00 | \$479,250.00 | 100.000000% |
| 7 | Confederated Tribes and Bands of the Yakama Nation | \$612,837.00 | \$128,304.83 | 20.936208% |
| 8 | Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians | \$101,033.25 | \$192.83 | 0.190863% |
| 9 | Coquille Indian Tribe | \$351,075.00 | \$1,325.23 | 0.377477% |
| 10 | Minnesota Chippewa Tribe - Fond du Lac Band (of Lake Superior Chippewa) | \$1,284,400.00 | \$17,437.18 | 1.357613% |
| 11 | Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California | \$628,908.64 | \$381.57 | 0.060671% |
| 12 | Gila River Indian Community of the Gila River Indian Reservation, Arizona | \$3,145,250.00 | \$48,052.77 | 1.527789% |
| 13 | Hoopa Valley Tribe, California | \$4,061,053.41 | \$12,476.82 | 0.307231% |
| 14 | Lower Brule Sioux Tribe of the Lower Brule Reservation, SD | \$2,038,975.00 | \$6,174.81 | 0.302839% |
| 15 | Mashantucket Pequot Indian Tribe | \$218,276.89 | \$1,226.76 | 0.562019% |
| 16 | Mohegan Tribe of Indians of Connecticut | \$822,236.00 | \$196.94 | 0.023951% |
| 17 | Muscogee (Creek) Nation (The) | \$2,963,104.80 | \$2,963,104.80 | 100.000000% |
| 18 | Native Village of Stevens | \$75,698.00 | \$320.02 | 0.422764% |
| 19 | Oglala Sioux Tribe | \$919,516.55 | \$77,273.38 | 8.403697% |
| 20 | Pala Band of Mission Indians | \$829,500.00 | \$5,395.27 | 0.650424% |
| 21 | Pueblo of Isleta | \$1,741,387.00 | \$13,949.74 | 0.801071% |
| 22 | Quapaw Tribe of Indians (The) | \$3,103,670.00 | \$21,979.05 | 0.708163% |
| 23 | Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona | \$503,707.95 | \$25,802.93 | 5.122596% |
| 24 | San Manuel Band of Mission Indians, California | \$2,200,000.00 | \$459.52 | 0.020887% |
| 25 | Shoshone-Bannock Tribes of the Fort Hall Reservation | \$287,546.53 | \$23,661.23 | 8.228661% |
| 26 | Three Affiliated Tribes of the Fort Berthold Reservation, ND (MHA) | \$206,000.00 | \$26,016.27 | 12.629259% |
| 27 | White Mountain Apache Tribe | \$688,050.38 | \$55,015.33 | 7.995829% |
| | Total | \$33,040,209.20 | \$6,020,321.00 | |

Notes:

- Dollar amounts correspond to each Tribe's final, corrected Appendix D-4 submission, in response to the first funding cycle established by The Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, dated 02 October 2017.
- Allocation algorithm is consistent with "Response to Tribal Consultation," issued by the U.S. Department of Justice, Office of Tribal Justice, with regard to the distribution of the Tribal Allocation Subaccount of the Environmental Mitigation Trust established under the settlement of *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*. See the U.S. Department of Justice response to Tribal Consultation Item No. 5, "Distribution of Tribal Allocation Subaccount" (pp. 3-5). Document is not dated. Available online at: <https://www.justice.gov/tribal/page/file/1002716/download>.
- In the event the allocation algorithm results in funds allocated to a Beneficiary in excess of the amount requested by said Beneficiary in its final, corrected Appendix D-4 submission, the allocated amount is capped at the amount requested, and the incremental difference is reallocated among the remaining Beneficiaries based on percentage share of total population, adjusted to remove the capped Beneficiary. This process is repeated until such time as no Beneficiary is allocated funds in excess of the requested amounts in their respective final, corrected Appendix D-4 submission.
- The allocation algorithm relies on Total Population data from Table DP-1 of the United States Census Bureau data repository, American FactFinder, filtered according to geography (i.e., American Indian and Alaska Native areas). Table DP-1, 2010 Demographic Profile Summary File (SF), accessed 16 January 2018. Population data are interpolated from Column C "Geography" (the measure for Tribal Entity) and Column D "Number; SEX AND AGE - Total population" (the measure for total population).
- Total remaining assets in the Tribal Allocation Subaccount as of 31 December 2017 total \$36,121,926. See Wilmington Trust, "123437-001 VWTRUST-TRIBAL ALLOCATION SUBACCT, as of December 31, 2017." Pursuant to Section 5.0.5.2.1 of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, dated 02 October 2017, one-sixth of available remaining funds total \$6,020,321.00 [or \$36,121,926 x (1 ÷ 6)].
- Given that the proportional share of total population is a factor in the allocation protocol required by Section 5.0.5.2.3, and the majority of Indian Tribes participating in the first funding cycle are small, we elect to show percentages to six decimal places.

Exhibit C

Initial Calculation Of Allocation Of Trust Funds To The Beneficiaries In The First Funding Cycle Under The Proposed Allocation Formula In The Modified Trust Agreement

First Funding Cycle: Summary of Allocation of Trust Payment to Designated Beneficiaries (Modified Trust Agreement)

| No. | Beneficiary Name (Federally-Recognized Indian Tribe) | Total Population per U.S. Census Table PCT4 | Appendix D-4 Amount | Final Trust Payment Allocation | % of Final Trust Payment Allocation Relative to Final Amount Requested |
|--------------|--|---|------------------------|--------------------------------------|--|
| 1 | Beaver Village | 83 | \$68,348 | \$68,348 | 100.000000% |
| 2 | Bishop Paiute Tribe | 1,180 | \$76,811 | \$76,811 | 100.000000% |
| 3 | Blue Lake Rancheria | 39 | \$446,200 | \$116,432 | 26.094065% |
| 4 | Cherokee Nation | 125,440 | \$3,988,397 | \$808,789 | 20.278537% |
| 5 | Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD | 6,331 | \$1,198,977 | \$222,317 | 18.542204% |
| 6 | Chickasaw Nation (The) | 41,048 | \$479,250 | \$453,709 | 94.670591% |
| 7 | Confederated Tribes and Bands of the Yakama Nation | 8,022 | \$612,837 | \$250,774 | 40.920144% |
| 8 | Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians | 31 | \$101,033 | \$101,033 | 100.000000% |
| 9 | Coquille Indian Tribe | 157 | \$351,075 | \$118,417 | 33.729967% |
| 10 | Minnesota Chippewa Tribe - Fond du Lac Band (of Lake Superior Chippewa) | 14,834 | \$1,284,400 | \$365,410 | 28.449833% |
| 11 | Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California | 62 | \$628,909 | \$116,819 | 18.574829% |
| 12 | Gila River Indian Community of the Gila River Indian Reservation, Arizona | 11,251 | \$3,145,250 | \$305,113 | 9.700757% |
| 13 | Hoopa Valley Tribe, California | 2,667 | \$4,061,053 | \$160,657 | 3.956044% |
| 14 | Lower Brule Sioux Tribe of the Lower Brule Reservation, SD | 1,396 | \$2,038,975 | \$139,268 | 6.830295% |
| 15 | Mashantucket Pequot Indian Tribe | 223 | \$218,277 | \$119,528 | 54.759853% |
| 16 | Mohegan Tribe of Indians of Connecticut | 30 | \$822,236 | \$116,280 | 14.141957% |
| 17 | Muscogee (Creek) Nation (The) | 99,451 | \$2,963,105 | \$665,208 | 22.449701% |
| 18 | Native Village of Stevens | 71 | \$75,698 | \$75,698 | 100.000000% |
| 19 | Oglala Sioux Tribe | 16,906 | \$919,517 | \$400,278 | 43.531370% |
| 20 | Pala Band of Mission Indians | 706 | \$829,500 | \$127,656 | 15.389553% |
| 21 | Pueblo of Isleta | 3,170 | \$1,741,387 | \$169,122 | 9.711903% |
| 22 | Quapaw Tribe of Indians (The) | 1,314 | \$3,103,670 | \$137,888 | 4.442743% |
| 23 | Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona | 4,692 | \$503,708 | \$194,735 | 38.660258% |
| 24 | Shoshone-Bannock Tribes of the Fort Hall Reservation | 3,776 | \$287,547 | \$179,320 | 62.361941% |
| 25 | Three Affiliated Tribes of the Fort Berthold Reservation, ND (MHA) | 4,763 | \$206,000 | \$195,930 | 95.111475% |
| 26 | White Mountain Apache Tribe | 13,014 | \$688,050 | \$334,782 | 48.656602% |
| Total | | 360,657 | \$30,840,210 | \$6,020,321 | |

Notes:

- * Refer to Appendix D-8 Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries for a full explanation of the population figures displayed in this table. The population data in this table are fully qualified by all of the notes to Appendix D-8 to the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries.
- * Dollar amounts correspond to each Tribe's final, corrected Appendix D-4 submission, in response to the first funding cycle established by The Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, dated 02 October 2017.
- * Allocation algorithm consistent with final Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, dated June 21, 2018 as filed in the Docket for *United States of America v. Volkswagen AG et al*, Case No. 3:16-cv-00295-CRB, Document No. 62.
- * The allocation algorithm relies on Total Population data from Table PCT4 of the 2010 United States Census Bureau data repository, American FactFinder, filtered according to geography and population (i.e., American Indian and Alaska Native areas).
- * Total remaining assets in the Tribal Allocation Subaccount as of 31 December 2017 total \$36,121,926. See Wilmington Trust, "123437-001 VWTRUST-TRIBAL ALLOCATION SUBACCT, As of December 31, 2017." Pursuant to Section 5.0.5.2 of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries, dated June 21, 2018 (Document No. 62, Case No. 3:16-cv-00295-CRB), one-sixth of available remaining funds total \$6,020,321.00 [or \$36,121,926 x (1 / 6)].
- * We elect to show percentages to six decimal places.

Exhibit D

**Test Showing Hypothetical Allocation Permutations Using The Proposed Allocation
Formula In The Modified Trust Agreement**

SUMMARY TABLE. Test Showing Hypothetical Allocation Permutations, as directed by the United States, using the allocation formula in the Modified Trust Agreement and consistent with U.S. Census Table PCT4

| | Funding Cycle | No of Participating Beneficiaries | Cap at Amount Requested | Funding Amount Available for Distribution | Minimum Per Tribe Amount Funded | Maximum Per Tribe Amount Funded |
|---------------------|---------------|-----------------------------------|-------------------------|---|---------------------------------|---------------------------------|
| Four Funding Cycles | 1 | 26 | Yes | \$ 6,020,321 | \$ 68,348 | \$ 808,789 |
| | 2 | 100 | N/A | \$ 15,235,068 | \$ 76,175 | \$ 1,685,411 |
| | 3 | 200 | N/A | \$ 15,235,068 | \$ 38,088 | \$ 1,647,323 |
| | 4 | 568 | N/A | \$ 15,235,068 | \$ 13,676 | \$ 1,252,862 |

Disclaimer: At the request of the United States, the Trustee created this table in order to illustrate how the allocation in the Modified Trust might work over a range of permutations. The above table reprints hypothetical allocations for each of four funding cycles, using the allocation formula in the Modified Trust. The figures used in this table are for comparative and illustrative purposes only, and are **not** intended to be guaranteed amounts or outcomes for any funding cycle.

Actual figures determined by the Trustee for each funding cycle will depend on a number of currently unknown factors, including without limitation, actual remaining available assets for each cycle, actual number of participating Beneficiaries in each cycle and the mix of Beneficiaries in each cycle.

ATTACHMENT G

[Proposed] Order Approving Modifications to Indian Tribe Trust Agreement

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 CRB (JSC)
MARKETING, SALES PRACTICES, AND)
PRODUCTS LIABILITY LITIGATION) **[PROPOSED] ORDER APPROVING**
) **MODIFICATIONS TO INDIAN TRIBE**
) **TRUST AGREEMENT**

This Document Relates to:)
)
United States v. Volkswagen AG et al.,)
Case No. 16-cv-295 (N.D. Cal.))
)
)
)
)

1 Having reviewed and considered the United States’ request for Court approval of modifications
2 to the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”),
3 the Court:

4 1) **GRANTS** the United States’ request, and hereby approves, in accordance with Paragraph 6.5
5 of the Trust Agreement, the modifications to the Trust Agreement and all of the terms and conditions
6 thereof (appended to the United States’ request as Attachment A) and,

7 2) **ORDERS** that within two weeks following the date that this Order is entered by the Court,
8 (a) the Trustee and the Settling Defendants shall execute and deliver to the United States the executed
9 Trust Agreement, and (b) the United States shall file the fully executed Trust Agreement with the Court.

10 3) **ORDERS** that the modifications to Trust Agreement shall become effective on the date that
11 the fully executed Trust Agreement, as modified on August 13, 2018, is filed with the Court (“Trust
12 Modification Effective Date”). The Trust Agreement, as modified on August 13, 2018, supersedes the
13 Trust Agreement filed with the Court on October 2, 2017 (Dkt. No. 51-2), and, as of the Trust
14 Modification Effective Date, shall constitute the legal, valid, and binding rights, duties, and obligations
15 of all parties thereto. The Court directs the Trustee and the Settling Defendants to commence
16 performance of their obligations in accordance with the terms of the Trust Agreement, as modified on
17 August 13, 2018, immediately upon the Trust Modification Effective Date.

18 **IT IS SO ORDERED.**

19 Dated: _____, 2018

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23 _____
24 CHARLES R. BREYER
25 United States District Judge
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