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Agency Secretary

Air Resources Board

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Arnold Schwarzenegger
Governor

February 4, 2004

Mr. Wayne Nastri
Regional Administrator
Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105-3901

Dear Mr. Nastri:

In your December 3, 2003 letter, the U.S. Environmental Protection Agency (U.S. EPA) notified Governor Schwarzenegger of its intent to modify California's July 15, 2003 recommendations for area designations under the federal eight-hour ozone air quality standard. The Air Resources Board (ARB or Board) is responding on behalf of the State of California.

U.S. EPA concurs with the majority of our recommendations and we appreciate the opportunity to provide additional information to support a few important modifications needed to address the remaining issues. We are asking U.S. EPA to change some proposed area designations and boundaries consistent with the most recent air quality data, and to clarify some area descriptions. We also request U.S. EPA's help on a transportation conformity issue that is vital to the new rural areas that will be designated nonattainment for the first time under the eight-hour ozone standard.

Bay Area Designation as Nonattainment

The San Francisco Bay Area should be added to the list of nonattainment areas because this region recorded violations of the standard in 2003. This is a change to our previous recommendation that was based on data through 2002. Using preliminary 2003 data for all of California, Enclosure 1 presents the State's updated recommendations for nonattainment, attainment, and unclassifiable area designations for the eight-hour ozone standard. We believe it is important and useful for U.S. EPA to distinguish between areas with monitoring data meeting the standard (attainment) and areas with insufficient monitoring data to determine compliance (unclassifiable), rather than blending the two together. Enclosure 2 includes legal descriptions of the corresponding boundaries for each of the State's recommended nonattainment areas.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

Clarifications Needed on Area Descriptions

In the table enclosed with the December 3, 2003 letter, U.S. EPA described its proposed nonattainment areas in a general way. For three areas, the State's recommendations include subtle but important details that are not explicitly reflected in U.S. EPA's table. Staff discussions with Region 9 indicate agreement on these details. We request that U.S. EPA affirm its agreement in writing that:

- Eastern Kern County excludes Indian Wells Valley,
- Ventura County excludes Anacapa and San Nicolas Islands, and
- Western Mojave Desert includes those portions of San Bernardino County within the existing Southeast Desert Modified one-hour ozone nonattainment area, rather than all portions of San Bernardino County within the Mojave Desert Air Basin.

Changes Needed on Proposed Nonattainment Area Boundaries

We in are in agreement on which air districts in California violate the eight-hour ozone standard. The remaining issues involve U.S. EPA's proposal to consolidate a number of air districts into single nonattainment areas. This would affect five air districts in the Mountain Counties Air Basin and one air district in the Mojave Desert of southern California.

1. San Joaquin Valley and Mountain Counties U.S. EPA proposed to consolidate the Amador, Calaveras, Tuolumne, and Mariposa air districts with the San Joaquin Valley into one very large nonattainment area. We recommended separate nonattainment areas for the Central Mountain Counties (Amador and Calaveras) and Southern Mountain Counties (Tuolumne and Mariposa).
2. Nevada County and the Sacramento Region U.S. EPA similarly proposed to combine Western Nevada County with the Sacramento Region, while we recommended Western Nevada County as a separate nonattainment area.
3. Antelope Valley U.S. EPA proposed to group the Antelope Valley with the Western Mojave Desert area, while we recommended these as two separate nonattainment areas.

We continue to disagree with these proposals, and urge U.S. EPA to follow the State's July 2003 recommendations. Under the State's proposal the same districts would be designated nonattainment, but California would be able to most efficiently and effectively implement the new eight-hour ozone standard. We provide the technical and legal rationale for our recommendations below.

Rationale for Changes on Proposed Boundaries

Our recommendations for nonattainment area boundaries are consistent with federal statute, regulations, and guidance. Below, we highlight the rationale for U.S. EPA to reconsider its proposed modifications to the State's boundary recommendations. The Appendix to this letter provides additional support, including how U.S. EPA proposals for other states are consistent with what we are asking you to do here.

U.S. EPA's actions are very important to the impacted local agencies and officials. Enclosure 3 contains the letters we have received to date from local representatives who lay out their views of the best air quality planning structure for their area. In some cases, these letters offer more facts that distinguish these downwind rural areas from the upwind urban areas that would all be consolidated with the U.S. EPA proposal. Please consider these comments (and subsequent local letters) in your deliberations.

Consistency of Boundaries with Federal Guidance. In the December 3, 2003 letter, you provided direction on how to draw boundaries for the eight-hour ozone standard. First, U.S. EPA emphasized that California should use the larger of the Consolidated Metropolitan Statistical Area or Metropolitan Statistical Area (we refer to these collectively as the C/MSA), or the one-hour ozone nonattainment area, as the presumptive boundary for eight-hour ozone nonattainment areas. Second, the letter cites 11 factors in U.S. EPA boundary guidance that should be considered. The letter then makes incorrect reference to the Mountain Counties appearing to be part of the Sacramento and San Joaquin Valley airsheds before concluding that a regional approach appears best suited to addressing air quality.

We recognize U.S. EPA's desire to benefit air quality by consolidating upwind and downwind areas linked by transport. However, a closer examination of the facts and application of U.S. EPA's boundary principles clearly support making the foothills counties separate nonattainment areas from the upwind Sacramento Region and San Joaquin Valley. In fact, Western Nevada County, the Central Mountain Counties, and the Southern Mountain Counties all:

- Are in a different air basin (or airshed) than Sacramento and the San Joaquin Valley.
- Are outside the current one-hour ozone nonattainment area in the Sacramento Region and San Joaquin Valley.
- Are outside the C/MSAs in place in the Sacramento Region and San Joaquin Valley.
- Are less dense and less urbanized than the Sacramento Region and San Joaquin Valley.

- Have lower emissions and less severe ozone pollution than the Sacramento Region and San Joaquin Valley.
- Show significant elevation gain compared to the near-sea level Sacramento and San Joaquin Valleys.
- Have independent local air districts and transportation agencies, separate from the Sacramento Region and San Joaquin Valley.

Effective Air Quality Planning and Expeditious Attainment. Congress specifically recognized the importance and need for each *state* to be able to modify its air quality control regions, with the approval of the U.S. EPA Administrator, “for purposes of efficient and effective air quality management.” [Clean Air Act section 107(e)(1)] California’s recommendations for more nonattainment areas would result in the most effective structure for federal air quality planning and aid expeditious attainment of the eight-hour ozone standard to benefit public health.

While attainment in the Mountain Counties areas will depend primarily on further upwind and statewide controls, differences in the severity of the ozone problems indicate it is premature to assume that the downwind areas will need the same time to attain as their urban neighbors. Thus, U.S. EPA’s proposal to combine upwind and downwind areas with a single attainment deadline may be less health-protective.

U.S. EPA’s proposed modifications to the State’s recommended nonattainment areas would force changes to the existing framework for air quality planning. In this era of budget shortages, it is especially important not to impose new federal mandates to change the structure for air quality planning in California. The State has already demonstrated a successful process to address intrastate transport across multiple nonattainment areas by linking regional attainment demonstrations in the State Implementation Plan (SIP) submittals.

Ability to Tap Existing Flexibility in Statute. U.S. EPA’s proposed boundaries could also preclude the new rural nonattainment areas in the Mountain Counties from using the more flexible implementation provisions of Subpart 1 of the Clean Air Act. Instead, they would be faced with the more extensive and prescriptive mandatory requirements in Subpart 2 designed for severely polluted areas. If Western Nevada County, Central Mountain Counties, and Southern Mountain Counties are maintained as separate nonattainment areas, they would all qualify for entry into Subpart 1 according to U.S. EPA’s current proposal for area classifications. We have consistently maintained that these new rural areas significantly affected by transport should be eligible for the streamlined requirements specifically allowed by federal law under Subpart 1.

Transportation Conformity in New Rural Nonattainment Areas

Regardless of whether U.S. EPA accepts California's recommendations or pursues its current proposal, transportation conformity will be a new requirement and analytical process for Nevada, Amador, Calaveras, Tuolumne, and Mariposa Counties. The vehicle population, miles traveled, and transportation investment in these counties are far less than in existing, largely urban nonattainment areas familiar with conformity.

We believe strongly that the conformity procedures in these new areas can and should be scaled down to reflect the scarcity of transportation improvement projects, the limited analytical tools available today, and the minimal staff resources. In these rural areas, the methods used to estimate the emissions impacts of potential transportation projects can be much more basic than in upwind cities that have invested considerable staff and financial resources in developing sophisticated transportation models and the data to supply those models. A simplified analytical approach can meet statutory and regulatory requirements. It can also be approved by U.S. EPA and the U.S. Department of Transportation under their existing discretion.

ARB is beginning discussions with the local air quality and transportation planning agencies and the California Department of Transportation aimed at developing appropriate conformity analysis methods and procedures for the new areas. We anticipate that each region will propose specific approaches during the public process for development of the required conformity SIPs. We ask that the federal agencies work with California to devise complying procedures that minimize the burden on local transportation and air quality agencies.

Changes Needed on Proposed Attainment Status

U.S. EPA proposed to designate all of Sutter and Yuba Counties as nonattainment based on 2003 ozone data from the special purpose monitor designed to measure high-elevation transport atop the isolated Sutter Buttes Mountains. Because neither monitor in Sutter and Yuba Counties shows community exposure to ozone levels above the eight-hour standard, it is appropriate for this region to be designated attainment. The Appendix provides the rationale for changes to U.S. EPA's proposal in this region.

Transmittal of Updated Ozone Monitoring Data

We are working with local air districts and other responsible agencies to expedite reporting, quality assurance, and analysis of 2003 ozone data as you requested. We expect to transmit data for 2001-2003 as soon as possible in March 2004, so it can be reflected in your promulgation of eight-hour ozone designations and classifications.

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To facilitate public access, we have posted this transmittal and related materials on our website at: <http://www.arb.ca.gov/planning/sip/sip.htm>.

If you have questions, please call Ms. Lynn Terry, Deputy Executive Officer, at (916) 322-2739 or have your staff contact Ms. Cynthia Marvin, Chief, Air Quality and Transportation Planning Branch, at (916) 322-7236.

Sincerely,

/s/

Catherine Witherspoon
Executive Officer

Appendix and Enclosures

cc: See next page.

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cc: (All with Appendix and Enclosure 1)

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