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8	UNITED STATES DISTRICT COURT			
9	NORTHERN DISTRICT OF CALIFORNIA			
10	SAN FRANCISCO DIVISION			
11	IN DE. VOI VOWACEN "CLEAN DIECEL"	) MD	I No 2672 CDD (I	
12	IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION  This Document Relates to:  United States v. Volkswagen AG et al., Case No. 16-cv-295 (N.D. Cal.)	) MDL No. 2672 CRB (JSC)		
13		<ul><li>ORDER STAYING CERTAIN TRUSTEE</li><li>OBLIGATIONS UNDER THE</li></ul>		
14 15		<ul><li>ENVIRONMENTAL MITIGATION TRUST</li><li>AGREEMENT FOR INDIAN TRIBE</li></ul>		
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28	ORDER STAYING CERTAIN TRUSTEE OBLIGATIONS UND THE ENVIRONMENTAL MITIGATION TRUST AGREEME FOR INDIAN TRIBE RENEFICIAR			

ER NT MDL No. 2672 CRB (JSC)

1. On October 25, 2016, the Court approved a Partial Consent Decree between the plaintiffs
the United States and the State of California, and the Volkswagen Defendants in In re Volkswagen
"Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation. Dkt. No. 2103 (Order
Granting the United States' Motion to Enter Proposed Amended Consent Decree); Dkt. No. 2103-1
(Partial Consent Decree). As part of that settlement, the parties agreed that the Defendants would fund
mitigation trust to provide funds for eligible mitigation actions by State and Indian Tribe Beneficiaries.
Dkt. No. 2103-1 at 15, ¶14. On September 19, 2017, the Court approved the Environmental Mitigation
Trust Agreement for Indian Tribe Beneficiaries ("Indian Tribe Trust Agreement" or "Trust
Agreement"), which established the Indian Tribe Trust. United States v. Volkswagen AG et al., Case
No. 16-cv-295, Dkt. No. 49.

- 2. Pursuant to the terms of the Indian Tribe Trust, the Trustee, Wilmington Trust, N.A., is required to post its approval of the funding requests for the first funding cycle on the Indian Tribe Trust's public-facing website on Monday, March 5, 2018. Indian Tribe Trust Agreement, ¶¶ 5.0.5.2.3, 5.2.16.
- 3. On January 29, 2018, the Trustee filed notice with the Court that 29 Indian Tribes have qualified as Beneficiaries under the Indian Tribe Trust, and that 27 of those Indian Tribe Beneficiaries had submitted requests for funding of Eligible Mitigation Action projects in the first funding cycle under the Trust. Dkt. No. 4701.
- 4. The purpose of the Indian Tribe Trust is to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries. Indian Tribe Trust Agreement,  $\P$  2.0.3 (implementing the requirement of Section IV.D of the Partial Consent Decree).
- 5. The United States and the parties to the Indian Tribe Trust Agreement, namely the Defendants and the Trustee, 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.

Having reviewed and considered information received from the United States and the parties to the Indian Tribe Trust Agreement, the Court hereby:

- 1) **ORDERS** 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;
- 2) **ORDERS** that within 60 days of this Order, the United States shall file a status report to the Court, unless the United States instead files a proposed modification to the Indian Tribe Trust Agreement for the Court's consideration; and
- 3) **ORDERS** that the Trustee shall take no further actions related to its obligations under Section V (Distribution of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement, including without limitation, its obligations under subparagraph 5.0.5 (and all the subparagraphs thereof), and Paragraphs 5.1, 5.2 (and all the subparagraphs thereof), 5.3, and 5.4, as they relate to the first funding cycle and all future funding cycles under the Indian Tribe Trust, until ordered by the Court to do so.

## IT IS SO ORDERED.

Dated: March 2, 2018

CHARLES R. BREYER
United States District Judge