

Federally Recognized Tribes as Beneficiaries Under the Volkswagen Settlement

U.S. Dept of Justice

Eligibility

- Federally recognized Indian Tribes are eligible to become beneficiaries of the Volkswagen Settlement. The consent decree defines “Indian tribe” as 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 pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.
- Tribes can apply for eligible mitigation actions on Indian land, which is defined as the lands of any Indian tribe or lands within Indian country.
- Funds are limited in use to Eligible Mitigation Actions, Eligible Mitigation Administrative Expenditures, and Technical Assistance

Tribal Consultation

- United States Department of Justice consulted with tribes after lodging the 2.0 L Partial Consent Decree on the mechanism for allocating the funds in the Tribal Allocation Subaccount

Becoming a Beneficiary

- At the first funding request, Tribes must file certifications consistent with subparagraph 4.2 of the Partial Consent Decree to become beneficiaries. (Section 4.2 in handout)

Certification Requirements

- 4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Certification Form must include a designation of lead agency, certified by the Office of the Governor or (if not a state, the analogous chief executive) of the Appendix D-1 entity on whose behalf the 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 Appendix D-1 entity. The Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this 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 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.

Certification Requirements

- 4.2.2 Consent to Trustee Authority. Each Certification Form must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this 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 Agreement in accordance with its terms.
- 4.2.3 Certification of Legal Authority. Each Certification Form must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; (ii) prior to requesting any funds hereunder, the Certifying Entity shall obtain full legal authority to receive and/or direct payments of such funds; and (iii) if the Certifying Entity fails to demonstrate that it has obtained such legal authority within two years of submitting its Certification Form, it shall become an Excluded Entity hereunder and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1.

Certification Requirements

- 4.2.4 Certification of Legal Compliance. Each Certification Form must include a certification and agreement that, in connection with all actions related to this 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 Certification Form 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 allocation of such Certifying Entity.

Certification Requirements

- 4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Certification Form 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 Settling Defendants) of all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter 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. California's entry in the Consent Decree shall satisfy its certification obligations under this subparagraph. No waiver submitted by any Indian tribe shall be effective unless and until such Indian tribe actually receives Trust Funds.

Certification Requirements

- 4.2.7 Publicly Available Information. Each Certification Form 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, which procedures shall be designed to support access and limit burden for the general public, and for the Beneficiary Mitigation Plan required under Paragraph 4.1, the procedures by which public input will be solicited and considered. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

Certification Requirements

- 4.2.8 Notice of Availability of Mitigation Action Funds. Each Certification Form 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 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 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.
- 4.2.9 Registration of 2.0 Liter Subject Vehicles. – Certification Requirements Related to the vehicles

Notice

- 5.0.5.1 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, certifications consistent with subparagraph 4.2; and (ii) of the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying tribe, which determination shall be made in a manner consistent with the procedures set forth in Paragraph 4.0.2.

Reporting Obligations

- **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 1 and July 1 of each year, each Beneficiary shall serve upon 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, that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this subparagraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Trust's public-facing website upon receipt.