

A Tribal White Paper on Climate Change Adaptation and Mitigation

From the Intertribal Climate Change Working Group

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Indian tribes are exceedingly vulnerable to, and disproportionately impacted by climate changeⁱ. For example, 86 percent of Alaska Native Villages are threatened by flooding and erosion because of warming temperatures, and 31 Villages currently qualify for permanent relocation.ⁱⁱ Tribes in the continental United States heavily dependent on natural resources for economic and cultural vitality are facing a predicted 50 percent loss of salmon and trout habitat across the U.S. in the next 40 to 80 years.ⁱⁱⁱ

It is the sacred responsibility of indigenous peoples to ensure a healthy environment to sustain our cultural lifeways. We have been the keepers of Mother Earth from time immemorial and in our different ways look far backwards to listen to the wisdom of our elders and ancestors, and into a distant future to protect our children and the children to come.

The interpretation of the treaties and the federal trust obligations have resulted in a number of canons of construction, which provide that: 1. the treaties are to be construed as our Indian ancestors understood them; 2. treaties, statutes, and agreements are to be liberally construed in favor of the tribes; 3. all ambiguities are to be resolved in favor of the tribes; and 4. Tribal sovereignty and property rights are preserved unless Congress clearly and unambiguously provides otherwise.^{iv}

These principles have been supplemented in recent years by President Nixon's Special Message to Congress on Indian Affairs on July 8, 1970, that contained a national policy of self-determination for Indian Tribes; Executive Order 13175 (2000) on Consultation and Coordination With Indian Tribal Governments and Executive Order 13336 (2004), on American Indian and Alaska Native Education. Both reaffirm sovereignty and recognize a government-to-government relationship, and the Indian Tribal Justice Act [25 U.S.C. § 3601] asserts that the trust responsibility "includes the protection of the sovereignty of each tribal government."

In addition, new international conventions and declarations have been formally adopted by the member states of the United Nations establishing basic principles for relations between indigenous peoples and individual state governments. The Convention on Biological Diversity establishes the principle of "benefit sharing" and the necessity for ensuring the expansion of biodiversity with the active participation of indigenous peoples. The United Nations Declaration

on the Rights of Indigenous Peoples goes further by affirming that indigenous peoples have the right of self-determination. The Declaration also affirms the right of indigenous peoples to benefit from our own natural resources and to be actively engaged in constructive and cooperative relations with state governments within the domestic context as well as the international context on the basis of free, prior and informed consent when issues arise affecting the lives and property of indigenous people. The negotiating text being considered in Bonn, Germany in preparation for climate change treaty negotiations in Copenhagen, Denmark in December, 2009 must necessarily recognize these principles and confirm them in treaty language. The United States government is encouraged to join with other states' governments to work with indigenous nations to formalize appropriate language in the Treaty, based on the principles discussed above.

This body of law and common practice by and between Indian tribes and the United States dictates that we build a government-to-government framework that incorporates these principles.

It is through these principles and agreed standards of conduct that the Indian tribes generally interpret the directions that we and the Obama Administration should pursue to cooperatively design and implement strategies to assess, prevent, mitigate and adapt to climate change effects in Indian Country. When the tribes signed our treaties and reserved our rights, our ancestors believed that they were not just reserving plots of land for reservations, but that they were reserving sufficient lands and rights that would enable us to freely pursue our cultures. Treaty reserved rights were purposely designed to provide the resources we require to sustain our cultures, today and forever. Their understanding was that the federal government had the trust obligation to ensure that our reserved resources would persist "as long as the sun shines and the rivers flow."

Much of the current Administration's approach to climate change focuses on mitigation measures to reduce emissions and sequester carbon already in the atmosphere. These measures promise economic opportunities through conservation, technology development and green jobs. These are all important and necessary policy goals that Indian tribes generally support.

However, Indian tribes still remain concerned about potential domestic and worldwide effects of some climate mitigation measures on indigenous peoples domestically and around the world. Many are particularly concerned about the rapid expansion of biofuel crops and of Reduced Emissions from Deforestation and Degradation (REDD) schemes that currently lack sufficient safeguards for indigenous land, resource and other rights.

This White Paper does not address climate change issues related to mitigation and energy in depth. Other tribal organizations, governments and networks have provided the Administration with our priorities. The focus here is on recommendations related to adaptation measures, particularly as they concern natural and cultural resources needed by tribes to continue our lifeways in a warming world.

Mitigation is a necessary, but not sufficient to deal with climate change effects on the Indian tribes. While mitigation may offer economic benefits to tribes, some of the most severe effects are related to unmitigated climate change on living resources critical to tribal cultural identity and survival. As outlined above, the treaties define a place-based regime of rights. Tribes reserved a land base and off-reservation fishing, trapping, hunting and gathering rights that they believed would support our cultures. Some of the most damaging effects of climate change from a tribal point of view are related to large-scale ecosystem disturbance. Climate change is unraveling ecosystems, causing culturally-important species to shift their ranges so that they are becoming rare or disappearing from tribal territories and reserved lands altogether. The disturbed ecosystems are becoming vulnerable to invasion by exotic species from other regions. We do not have traditions related to these species, and their incursion can disturb the ecosystems even further. When these kinds of changes occurred historically, tribes could often shift on the landscape to track them, an option foreclosed by the modern reservation system.

Disturbed ecosystems are also susceptible to emerging diseases of humans, livestock, fish stocks and wildlife, often becoming less resilient to further disturbance. A recent report of the U.S. Climate Change Science Program presents evidence of thresholds in ecosystem responses to climate change^v. The report concludes "it is essential to increase the resilience of ecosystems and thus to slow or prevent the crossing of thresholds," and that crossing these thresholds will present resource and land managers with considerable challenges for adaptation. For tribes, crossing these thresholds could be catastrophic, as they can be long-lasting and in some cases irreversible.

Restoring ecosystems to provide resilience, better cover, water retention capacity, support for biodiversity and cultural ecosystem services will take many years, and there is considerable concern that delays in action could seriously decrease the likelihood of successful ecosystem-based adaptation for everyone. The burdens of failure would fall disproportionately on the poor and the Indian tribes.

Despite investments in the ecosystem approach to adaptation, it is certain that not all climate effects can be contained. Indian tribes will therefore have to adjust to unavoidable consequences. Only a few tribes are currently developing their own mitigation and adaptation plans. Section 453 of the House version of the Waxman Markey American Clean Energy and Security Act (ACESA) dedicates one percent of the allowances of an exceedingly small domestic adaptation fund to tribes on a competitive basis. These allowances are also limited to implementation of projects, with preferences given to tribes that submit adaptation plans with competitive applications. While there is a proposed discretionary waiver allowing tribal plans to vary from those of states, the minimum requirements of adaptation plans are nevertheless burdensome. As argued above, given the land area that we occupy, or on which we possess reserved rights, the one percent of allowances will be insufficient to adequately address adaptation needs. The importance of these lands is increased when our generally high biodiversity and ecological values are taken into account.^{vi} We also need to have flexibility to use allowances for adaptation planning and capacity building for planning.

While we seek support for such activities under the federal trust responsibility, these activities should take place under tribal sovereign authority. Tribal climate change adaptation will involve many sensitive cultural issues, and must be responsive to tribal values and traditions. Actions taken directly on tribal lands should occur under our own regulatory authority. Tribes must originate their own laws, regulations and cultural standards by which to address mitigation and adaptation to the adverse effects of changing climate. Based on such a tribal legal and regulatory framework tribal governments will become equal partners with other governing bodies at the local, state, federal and international levels working on an intergovernmental basis.

Within the context of these general observations, this paper turns to address tribal sectoral activities in more detail.

Tribal Adaptation Issues:

Climate change is devastating economies across the landscape all across the country. It is having a cumulative effect on Indian tribes because many tribal economies are directly related to the health of natural resources that are being significantly diminished. Adaptation is more complicated and will require a sophisticated approach.

Water Quality and Quantity: Water Quality/Water Storage, Distribution (consumptive needs, ecological needs):

Addressing water issues related to climate change is one of the highest priorities for Indian tribes. Water quantity and quality are crucial to sustainability of tribal placed-based society. Presently, priority is being given to industry and development in allocating ground water to support growth in population, industry and the economy. The demand for water will likely affect U.S. tribes in U.S. treaty negotiations on both sides of the North American border.

Climate change has multiple negative effects on water. Water quality is impaired as hydrological changes increase sediment loads and suspended organic particles. Increases in water temperature are causing declines in aquatic species of value to the Indian tribes, and also the increased incidence of water-borne human diseases. Water scarcity affects all aspects of tribal life, and extended droughts and potential mega-droughts could have long-lasting effects on tribal trust resources. Droughts and over-extraction are already affecting tribal water supplies, and sacred springs and other water-related spiritual sites. Drought also reduces aquatic habitat and concentrates agricultural and industrial contaminants. These effects could increase with water demands and conflicts triggered by climate change.

Ecological connectivity has been well-addressed in adaptation approaches. The need to maintain hydrological connectivity has not been addressed sufficiently. Tribal livelihoods and practices often depend directly on aquatic species and plants, or indirectly on environmental flows and aquatic habitats that support the culturally-important species of Indian tribes. The ecological effects of hydrological changes associated with climate change make aquatic systems

vulnerable to pathogens and invasive species. Water-related adaptation approaches should take into account both the consumptive needs of people and the needs of the landscape, plants and wildlife for water.

The federal government should enforce the “first rights’ of water reserved by Indian tribes, and seek to find ways to address the need for clean water quality to sustain growth that do not violate tribal rights. Improvement and collaborative growth management planning between tribal and non-tribal governing bodies is also needed to protect water quantity.

Principle of Proportionality and Just Burdens:

The Kyoto Accord uses the principle of common but differentiated responsibility to refer to the differing obligations that developed and developing countries have to reduce their emissions. The logic is that while all have contributed to climate change, the burden of mitigation should be proportional to contribution and related to capacity to mitigate.

Secretarial Order 3206 (1997), American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act set out a similar set of principles related to Indian tribes and endangered species. The Order reaffirmed tribal sovereignty and the government-to-government relationship between tribes and the federal government, and the federal trust responsibility. It further made the finding that endangered species regulations potentially impose a disproportionate burden for the conservation of listed species on tribes.

In broad terms, the Order directs agencies to act in ways that minimize the burdens on Indian tribes when enforcing the Endangered Species Act. Where latitude exists, conservation burdens are to be first imposed on non-Indians. If conservation measures on tribal lands are necessary, tribes have the authority to develop our own, self-determined plans under our governance powers. If any remaining conflicts cannot be resolved using the tribal plans or a mixture of tribal and non-tribal actions, the agencies are directed to attempt to find a tribal alternative that is least burdensome on the tribe.

A similar approach could be developed in an Executive Order related to climate change mitigation and adaptation as applied to Indian tribes to provide further direction to agencies.

Policy Action for Land Use and Population Growth:

Land use and population growth can have synergistic interactions with climate change, amplifying adverse consequences. One common adaptation measure is to reduce non-climate effects. Adaptation is the outcome of multiple processes acting on a number of scales. Integrated, holistic approaches need to be taken by federal agencies, states and Indian tribes to ensure that gains through adaptation measures are not erased by failure to address the adverse effects of non-climate processes. For example, ecosystem restoration of coastal habitats for adaptation may fail if upland land, sediment and runoff management are not addressed.

Co-benefits (combining adaptation and mitigation, and generating benefits through multiple pathways):

Adaptation and mitigation should be combined, where appropriate, to provide co-benefits. Indian tribes, closely dependent on the environment, traditionally manage for a number of values - including economic, social, aesthetic, ecological, biodiversity and spiritual. Projects that focus on a single value, such as carbon sequestration potential can fail to meet these multiple values. The expansion of carbon plantations, for example, has led to declines of biodiversity, water infiltration capacity, and ecosystem services. Under the ecosystem-based adaptation approach, trade-offs can be made using natural forests and other types of ecosystems and between mitigation and adaptation. Reduced carbon sequestration in old-growth forests which sequester carbon at rates lower than fast-growing plantations, can be traded against values for biodiversity, water infiltration, and ecosystem services.

Protected use of Traditional Knowledge (for its Tribal cultural value as well as historic and scientific value):

Traditional systems of knowledge are grounded in cultural ways evolved over many lifetimes. Native science is demonstrated through the test of time long preceding the existence of the United States to favorably maintain a balance between human needs and the capacity of nature to regenerate. Each tribal community remains rooted in traditional systems of knowledge and native sciences that must become a co-equal influence in decisions concerning policy and regulations addressing mitigation and adaptation to the adverse effects of climate change. Native science and conventional science together enhance human capacity to effectively address changing climate.

In some cases, climate change may overwhelm the capacity of traditional knowledge systems to cope with the scale and rate of change. However, significant traditional knowledge exists for construction, rainwater harvesting techniques, ecosystem and harvest management, erosion prevention, flood management, and numerous other traditional practices and techniques for adaptation. Native agriculturalists have extensive crop knowledge and have maintained high genetic diversity that will be valuable for adapting to rising temperatures, climate variability and extremes.

The ACESA must acknowledge the importance of traditional knowledge in assessing and addressing climate change, and must adopt measures to protect that knowledge. Traditional knowledge has many dimensions of spirituality, sacredness and cultural privacy. In many cases, the appropriate relationship will require that traditional knowledge be used in a co-management context and not shared with federal agencies. Traditional adaptation technologies and genetic resources for agricultural adaptation may have significant commercial value, and should be protected from misappropriation and accessed under the principle of free, prior and informed consent as agreed to in the Convention on Biological Diversity (CBD) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007).

Finally, attention needs to be focused on the transmission and maintenance of traditional knowledge itself, if it is not to disappear under climate change. Traditional knowledge is inextricably tied to the environment and bound up with continuous practice and innovation around a traditional core.^{vii} Many tribes already face enormous challenges in attempting to maintain traditional knowledge. This is partially related to the loss of livelihoods related to traditional life ways, as many ecosystems are already significantly influenced by development, land use, population growth and global environmental change. In addition, for many years elders had a limited opportunity to transmit their knowledge to the next generation, in part due to Indian policy in the United States. Tribes are revitalizing our traditions, but in some places, these have waned. Without special measures to support cultural revitalization and defense of natural resources critical to their identity, climate change is likely to add substantially to the loss of traditional knowledge.

Tribal Adaptation Technology:

Presently, the federal, state, provincial, Indian tribes and First Nation governments along our borders all have some role in managing the various ecosystems with each having differing levels of regulatory, science and policy responsibilities. Fragmented approaches across multiple jurisdictions are likely to fail to address the root causes of vulnerability to climate change and undermine adaptation efforts. Accordingly, the Indian tribes urge an integrated approach at the basin scale that coordinates the actions of governments and stakeholders, as well as actions at larger scales as appropriate.

Ecosystem-Based Adaptation

Ecosystem-based adaptation planning and management, combining native science and conventional science, have the potential to foster multi-party partnerships and support common policy actions. Ecosystem-based adaptation promotes jurisdictional coordination and management actions at a scale and using ecologically-defined boundaries that address adaptation holistically. Ecosystem-based approaches often require trans-boundary processes, and are often compatible with traditional tribal institutions and relationships. As indicated in the general introduction, ecosystem-based adaptation also provide for a diversity of values that can provide benefits to Indian tribes as well as public goods to multiple stakeholders.

Example-Salish Sea (US-Canada):

The Salish peoples of the Pacific Northwest have maintained ancient kinship relations between Canada and the United States. Many of these relationships were disrupted when settlers moved into the Pacific Northwest in the mid 1800s, and the borders became regulated. Over the last six years, Indian tribes from both sides of the border have been supported by the governments of Canada and the United States in a series of Salish Gatherings. In 2008 and 2009, the Salish Gathering cooperated with the U.S. Geological Survey to combine the revitalization of traditional canoe journeys with coordinated water testing in the Salish Sea, from Vancouver

Island to South Puget Sound. The scientists and tribal paddlers measured thousands of water quality data points. Many of the indicators are rarely gathered, because the measurements are sensitive to motorized boat wake and pollution. The measurements were only made possible by combining a traditional practice with scientific measurements. This is one example of trans-boundary ecosystem approaches and there may be many best practice models that can be found along the borders of the United States. Our request is for the United States to recognize this approach, and find ways to support such science and policies throughout the country.

Adaptation Planning for Tribal Governments: A Model

Tribal governments are governing in a crisis mode when addressing climate change, and are treating this as a matter of tribal homeland security. While a model to address climate change is already being created, or is already created as, in 32 of the 50 states - tribal approaches to climate change are still rare, but must be considered as a part of the toolbox. Two Indian tribes in the Pacific Northwest have developed tribal adaptation plans - the Quinault Indian Nation on its own initiative, and the Swinomish Indian Tribal Community (Swinomish) funded by the Administration of Native Americans.

The Swinomish Indian Tribal Community's approach consists of three components: 1) mitigation of climate change, 2) adaptation to climate change, and 3) preservation of tribal life ways. The plan uses strategic planning and assessment of infrastructure, funding, ordinances, green building codes, business, investment, and science to meet co-management responsibilities, sensitive areas, and to identify critical resources for cultural adaptation and maintenance of traditional ways of life.

The Swinomish Indian Tribal Community also recognizes that climate change effects and solutions will not stop within its reservation, as everyone in the Skagit Watershed faces the same consequences. The Swinomish therefore have brought together local, state and federal governments, academics and other tribes into a long-term partnership that is engaging in collaborative adaptation to jointly plan at the watershed level. Unity guides the plan to survive.

Traditional Tribal Lifeways and Risk Assessments:

The United States government must recognize the authority of each tribal government to conduct whole life risk assessments and expect that the conclusions of such tribally initiated risk assessments will form the basis laws and policies on climate change effecting tribal territories, resources, peoples and interests. Such risk assessments would naturally form the basis for tribal laws, regulations and expressions of cultural standards. Where there is a difference between tribal laws, regulations and cultural standards established in response to the adverse effects of climate change and those of the federal government or state government, mediation must be recognized as appropriate and desirable to achieve a policy settlement. Models for the traditional tribal lifeways approach have been supported under the U.S. Environmental Protection Agency's

Tribal Science Council, and adopted formally by some Indian tribes, including the Mohawk Nation and the Quinault Tribe.

Coastal Defense and Marine Protected Areas:

The United States is surrounded by oceans and has many ocean front communities. Presently 218 Alaska Native Villages are stranded in that they have little funding or support from the United States to move them to safer grounds and build new sustainable communities, even though some are already beginning to fall into the sea due to sea-level rise, increased incidence and severity of storms and sea-ice changes related to climate change. Immediate action is needed to meet the crisis that these native communities are facing, including funding for relocation with their free, prior and informed consent.

Serious attention also needs to be given to the lower coastal states. There are many coastal reservations, often small in size and low-lying. Many of our Indian tribes lost many reservation lands during allotment, which had reduced an already small land base. It was assumed that coastal fishing tribes did not need a large land base, as many obtained most of their resources from the sea. With the decline and endangerment of many traditional fish stocks, particularly the salmon, many of these tribes are economically stressed and losing traditional livelihoods. The loss of coastline and "coastal squeeze" has the potential to erode significant portions of this land base, and the adverse effects on coastal habitat are hindering access to traditional marine resources.

The federal government should work with local, state and tribal governments to identify measures to protect the coastline, while avoiding "hard" coastal engineering resources that can cause damage to up-coast and down-coast areas (e.g. municipal shoreline hardening, armoring, seawalls, jetties, breakwaters etc.). Ecosystem-based adaptation, such as the protection of coastal wetlands and marshes, coastal vegetative barriers, and protection and re-vegetation of kelp and eelgrass, can provide multiple benefits for adaptation and cultural resources.

Marine protected areas have also been proposed as a means of coastal adaptation, and will form a part of the National Ocean Policy. We request that any such approaches recognize and respect marine rights, and that we be closely involved in planning marine protected areas on a government-to-government basis.

Adaptation Corridors:

"Corridor plans" for wildlife, natural plants and other connectivity values are of critical importance to tribal ecosystems. Corridors provide badly needed protection for indigenous plants, wildlife, streams and other resources and habitats that are essential to tribal culture and the survival and proper management of these resources. They must be protected and provided for.

Support for Basin-wide Cross-jurisdictional Planning:

As the Swinomish case emphasized, the scale of the solutions should match the scale of the problems. The effects of climate change cross every border and jurisdiction in a manner that must be met through cooperative adaptation measures involving many stakeholders over large areas if adaptation is to be successful. Adaptation provisions should embrace a basin-wide cross-jurisdictional planning process as a minimum standard, with wider frameworks as appropriate.

Tribal Co-management at Usual and Accustomed Places, Reserved Lands, and Other Lands where They Retain Rights:

Ecological disturbance and species range shifts associated with climate change will likely make some culturally-important species become rare or disappear from tribal lands. To continue their culture, tribes will necessarily become more dependent on off-reservation usual and accustomed places, reserved lands, and other lands where they retain rights. Co-management, in addition to access rights, will help ensure that habitat and ecosystems will be managed to protect reserved rights on tribal trust lands.

Role and Importance of Climate Change Networking:

Indian tribes should develop adaptation communication networks, with federal support, to more effectively coordinate local, regional, national and international activities. Effective networking is an important tool to exchange experiences, pool and coordinate adaptation resources to provide cost-efficient outcomes, and educate tribal membership, government agencies, and the general public on tribal perspectives on and contributions to adaptation. Current examples include the National Congress of the American Indians Communities of Practice Program (CoP) on Climate Change (www.climatechange.ncaiprc.org) and the Tulalip Tribes' Native Climate (native.climatecommons.net). Native Climate is currently preparing an on-line database with over thousands of entries and links to policy, scientific and tribal documents and organizations related to indigenous peoples and climate change, and has documented over 4,000 different adaptation measures, many specific to indigenous peoples. Other online services could be developed to track adaptation and mitigation projects, provide access to climate data sets, provide climate forecasting and related information targeted at tribal farmers, herders, ranchers and fishermen, and coordinate data exchange with national-level climate services and liaison with federal agencies. Perhaps most importantly, these kinds of networks can help tribes connect with other tribes. These activities are proposed under the Climate Service Program, Section F of ACESA, and the tribal components should receive separate treatment and greater emphasis as a capacity-building measure.

Great Nations Must Keep Their Word

All great nations must keep their word, and correct the injustices of their past. The federal government must keep treaties it has established with tribes and other nations as well as with

groups of tribes and groups of nations. If, in the making, or the keeping, of those treaties, there have been injustices, they stain the honor the U.S. and ignoring such injustice does not make it go away.

For example, in 1964, a sixty-year Columbia River Treaty was concluded by the United States and Canadian governments. The chief issues surrounding the Treaty were water storage and management for flood control and hydropower production. Tribes and Canadian First Nations and their aquatic cultural resources were not included as Treaty interests. Now, with the renegotiation of the Treaty underway, climate change is a significant impact issue. Receding glaciers that feed the Columbia River on both sides of the border are forecasted to reduce late summer flows by 12 percent in about a decade. The 13 tribes of the Columbia River Basin need to establish capacity from the federal government to address and assure mitigation and adaptation planning and actions for a renegotiated Treaty that protects and preserves tribal resources into the future. The Bonneville Power Administration, the Army Corps of Engineers and the Bureau of Reclamation have already begun a complex, analytical process to determine how climate change will affect future Treaty and river operations. While the tribes of the Columbia River Inter-Tribal Fish Commission are beginning to be engaged in this process, they lack the capacity to promote protection of their own aquatic resources within the process. Federal funding is necessary to protect tribal interests in this and other processes.

Tribes in the interior Western basins occupy large reservations and utilize ceded lands with treaty reserved resources located at lower elevations that are most susceptible to climate change impacts. These include summer water reductions, loss of native plants and winter flooding as documented by the Columbia River Inter-Tribal Fish Commission (Graves 2008). Tribal aquatic resources are already severely stressed, with 13 ESA listed species of salmon and Pacific Lamprey nearly extirpated from much of the Columbia Basin. Direct climate change funding support to interior basin tribes is critical to establish programs to protect tribal water rights and native lands including use of drought resistant crops advocated by the Umatilla Tribes and expansion of carbon sequestration actions already being implemented by the Nez Perce Tribe.

Pending Legislation - Primary Concerns:

The discussions about the ACESA have centered around the fact that funding should for tribes should be through direct monies or distribution of allowances at their option, rather than through competitive grants, and should be increased from the current one percent to at least five percent. There has also been significant discussion about the need for tribes to be both be acknowledged for our achievements in green energy, and supported in ongoing efforts in that regard, e.g., energy efficient cars should be readily available through the U.S. General Services Administration, green housing support provided, etc.

Tribes are concerned about the limited savings clause in Section 482 of the bill. The existing language is too narrow, and differs significantly from tribal savings provisions in other federal

legislation. Such language may lead to inadequate protection of tribal rights and interests. We request that the existing savings clause in Section 482 of H.R. 2454 be supplemented with the following language:

- (a) TREATY RIGHTS.—Nothing in this subpart is intended to alter, modify, enlarge, diminish, or abrogate:
- (1) any treaty rights reserved by a tribe;
 - (2) any rights possessed by a tribe secured by statute, case law or by any other means;
 - (3) any water rights possessed by, reserved on behalf of, a tribe; and
 - (4) the Trust Responsibility owed to any Indian tribe.

Indian tribes also request that the bill include language that reconfirms treaty-protected access on public lands for fishing, hunting and gathering of cultural resources.

We are pleased that ACESA treats tribes as sovereigns in numerous places in the bill, but it is not totally consistent in that regard and this oversight must be remedied.

The funding level in the ACESA is not acceptable and we respectfully request support for at least five percent direct funding (rather than be asked to vie against one another for grants). This, unfortunately, can be easily misconstrued as part of the old “divide and conquer” mentality which works against the overall government-to-government relationship.

ⁱ Intergovernmental Panel on Climate Change, Working Group II Report, Impacts, Adaptation and Vulnerability, d., Summary for Policymakers, Ch. 14, p. 639 (Fourth Assessment Report, 2007).

ⁱⁱ See GAO-04-142, Alaska Native Villages: Most Are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance (December, 2003), and GAO-09-551, Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion) (June, 2009).

ⁱⁱⁱ Steve Torbit, National Wildlife Federation, Impacts of Climate Change on Tribal Resources, at www.Tribalclimate.org/GreatLakes, (accessed Oct. 8, 2008).

^{iv} Judith V. Royster and Michael C. Blumm (2008), Native American Natural Resources Law, p. 116; see also Nell Jessup Newton (ed.), Cohen's Handbook of Federal Indian Law, 2008, 119-124.

^v CCSP (2009): *Thresholds of Climate Change in Ecosystems*. A report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [Fagre D.B., Charles C.W., Allen C.D., Birkeland C., Chapin F.S. III, Groffman P.M., Guntenspergen G.R., Knapp A.K., McGuire A.D., Mulholland P.J., Peters D.P.C., Roby D.D., and Sugihara G.] U.S. Geological Survey, Department of the Interior, Washington D.C., USA.

^{vi} Maffi, Luisa E.; Oviedo, Gonzalo; Larsen, Peter Billy (2000). *WWF People and Conservation Programme / Terralingua*. World Wide Fund for Nature International (WWF), Gland, Switzerland.

^{vii} Tsosie, Rebecca (2007). Cultural challenges to biotechnology: Native American genetic resources and the concept of cultural harm. 36 *The Journal of Law, Medicine & Ethics* 396.