

National Tribal Environmental Council
Recommended Changes to S. 2191 to Address Tribal Issues and Concerns

(1) General Allocation Tribal Set-Aside

A. Establishing a Tribal Program

Alternative language to the current Section 3303(d) is provided below:

(d) Program for Indian Tribes.—

(1) ESTABLISHMENT.—Not later than 2 years after the date of enactment of this Act, the Administrator shall establish a program to assist Indian tribes in addressing local and regional impacts of climate change in accordance with Sec. 4904.

(2) IN GENERAL.—The Administrator shall develop regulations in accordance with the Negotiated Rulemaking Act (5 U.S.C. 651 et seq.), with consultation from representatives from Indian tribes in each EPA Region, to distribute proceeds from the Tribal Climate Change Assistance Fund, authorized by Sec. 4101(8) on an annual basis beginning no later than 2011.

(3) ALLOCATION.— Not later than April 1, 2011, and annually thereafter through calendar year 2049, the Administrator shall allocate 0.5 percent of the Emission Allowance Account for each calendar year to the program established under paragraph (1).

(4) DISTRIBUTION.—For each calendar year, the Administer shall allocate 0.5 percent of the Emission Allowance Account set-aside for the Program for Indian Tribes to the Corporation for annual auctioning of allowances authorized by this subsection, in accordance with Sec. 3102.

B. Distribution of Emissions Allowances

New language has been provided below, some within existing sections and other as part of new sections:

SEC. 4101. ESTABLISHMENT.

(8) Tribal Climate Change Assistance Fund.

SEC. 4302. ANNUAL AUCTIONS.

(H) TRIBAL CLIMATE CHANGE ASSISTANCE FUND.—For each of calendar years 2012 through 2050, the Corporation shall deposit into the Tribal Climate Change Assistance Fund, established by section 4101(8), the proceeds from the annual auction conducted by the Corporation, of the 0.5 percent of the Emission Allowances Account set-aside for the Program for Indian Tribes, as provided for by section 3303(d), and for the calendar year under this section.

The following language provides guidance to tribes and the EPA about the negotiated rulemaking process. It heavily borrows from the Indian Education and Self-Determination Act, restating the unique relationship that exists between the federal government and Indian tribes. It also provides the purposes of the Fund and how it will be used.

Subtitle J—Tribal Climate Change Assistance Fund

SEC. 4904. FINDINGS.—

(1) The Congress declares its commitment to the maintenance of the Federal government's unique and continuing relationship with, and responsibility to, Indian tribes.

(2) The Congress hereby recognizes the obligation of the United States to prepare for the likely disproportionate consequences of global climate change facing individual Indian tribes located throughout the United States.

(3) In keeping with the principles of self-determination and government-to-government consultation, the Congress declares its intent to establish cost-efficient mechanisms to provide for meaningful participation by Indian tribes in the planning, conduct and administration of programs and services authorized by this Act.

(4) In accordance with these policies, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering innovative programs and economic development initiatives in the face of global climate change.

SEC. 4905. PURPOSES.

(a) The purposes of this subtitle are—

(1) to establish a self-sustaining Tribal Climate Change Assistance Fund to address local or regional impacts of climate change affecting Indian tribes, now and in the future;

(2) to ensure that any proceeds from the sale of emission allowances set aside for Indian tribes according to Sec. 3303(d) are soundly invested and distributed by the Administrator through direct consultation with Indian tribes as beneficiaries; and

(3) to authorize the Administrator to distribute funds to Indian tribes as in accordance with the principles established by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f), under regulations to be developed, in consultation with the Secretary of Interior and Indian tribes, by the Administrator not later than 5 years after enactment of this Act.

(b) IN GENERAL.—

(1) The Administrator is authorized to distribute funds under the program to be developed by regulation according to Section 3303(d)—

(A) *To deliver assistance to Indian tribes within the United States that face disruption or dislocation as a result of climate change;*

(B) *to assist Indian tribes in planning and designing agricultural, forestry and other land use-related projects in accordance with section 2403 through the Indian General Assistance Program (42 U.S.C. §4368(b)); and*

(C) *to assist Indian tribes in the collection of greenhouse gas and other air quality data through the Indian General Assistance Program (42 U.S.C. §4368(b) and the Clean Air Act (42 U.S.C. 7403).*

(2) *The Administrator shall not require Indian tribes to obtain Tribal Authority pursuant to the Clean Air Act (42 U.S.C. 7601(d)) as a condition to participate in programs authorized by Sec. 3303(d) or this subtitle.*

SEC. 4906. FUNDING.—

(a) *Use of Funds.—For each calendar year, the amounts deposited into the Tribal Climate Change Assistance Fund established by section 4101(8) shall be made available, without further appropriation or fiscal year limitation, to the Administrator to carry out the program to be established according to Sec. 3303(d) and the purposes of this subtitle which are in excess of amounts annually appropriated to the Administrator for Indian Tribes under the Indian General Assistance Program (42 U.S.C §4368(b)) and the Clean Air Act (42 U.S.C. 7403 and 7601(d)).*

(2) Offsets

Additional language to existing provisions under Title D concerning Offsets has been provided below to include reference to tribes:

SEC. 2401. OUTREACH INITIATIVE ON REVENUE ENHANCEMENT FOR AGRICULTURAL

PRODUCERS..

(a) *ESTABLISHMENT.—The Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service, the Chief of the Forest Service, the Administrator of the Cooperative State Research, Education and Extension Service, and land-grant colleges and universities, and tribal colleges, in consultation with the Administrator and the heads of other appropriate departments and agencies, shall establish an outreach initiative to provide information to agricultural producers, agricultural organizations, foresters, **Indian tribes**, other landowners about opportunities under this subtitle to earn new revenue.*

(b) *COMPONENTS.—*

(3) *may include the creation and development of regional marketing centers or coordination with existing centers (including centers within the Natural Resources Conservation Service or the Cooperative State Research, Education*

and Extension Service, or at land-grant colleges and universities, **or tribal colleges**).

(c) HANDBOOK.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture, in consultation with the Administrator and after an opportunity for public comment, shall publish a handbook for use by agricultural producers, agricultural cooperatives, foresters, **Indian tribes**, other landowners, offset buyers, and other stakeholders that provides easy-to-use guidance on achieving, reporting, registering, and marketing offsets.

SEC. 2404. PROJECT INITIATION AND APPROVAL.

(g) DEVELOPMENT OF ACCOUNTING AND DISCOUNTING METHODS.—

(2) ADDITIONALITY DETERMINATION BASELINE ESTIMATION.—

(A) in the case of a sequestration project, determine the greenhouse gas flux and carbon stock on comparable land identified on the basis of—

(ii) similarity of regional, State, **Tribe**, or local policies or programs;

SEC. 2408. TIMING AND THE PROVISION OF OFFSET ALLOWANCES.

(b) PRE-EXISTING PROJECTS.—

(1) IN GENERAL.—The Administrator may allow for the transition into the Registry of offset projects and banked offset allowances that, as of the effective date of regulations promulgated under section 2407(a), are registered under or meet the standards of the Climate Registry, the California Action Registry, the GHG Registry, the Chicago Climate Exchange, the GHG CleanProjects Registry, or any other Federal, State, **Indian tribe**, or private reporting programs or registries if the Administrator determines that such other offset projects and banked offset allowances under those other programs or registries satisfy the applicable requirements of this subtitle.

(3) **Adaptation Tribal Set Aside**

SEC. 4702. ADAPTATION FUND.

(c) Land and Water Conservation Fund.—

(3) ALLOCATIONS.—Of the amounts deposited under this subsection into the Land and Water Conservation Fund—

(A) $\frac{1}{6}$ shall be allocated to the Secretary and made available to on a competitive basis to carry out adaptation activities through the acquisition of land and interests in land under section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–8)—

(i) to States, in accordance with comprehensive wildlife conservation strategies, and to Indian tribes,;

(4) **Other Sections of the Act**

Additional language to other sections of S. 2191 to include reference to tribes:

SEC. 4. DEFINITIONS.

(17) *LOAD-SERVING ENTITY.*—

(B) *whose rates and costs are, except in the cost of a registered electric cooperative, regulated by a State agency, regulatory commission, municipality, or public utility district, or pursuant to tribal law.*

(19) *TRIBAL REGULATORY AUTHORITY.*—*The term “Tribal regulatory authority” means any federally recognized Indian tribe that has been granted regulatory authority in accordance with section 301(d) of the Clean Air Act (42 U.S.C. 7601(d)).*

SEC. 1104. DATA QUALITY AND VERIFICATION.

(a) *PROTOCOLS AND METHODS.*—

(2) *BEST PRACTICES.*—*The protocols and methods developed under paragraph (1) shall incorporate and conform to the best practices from the most recent Federal, State, Tribal, and international protocols for the measurement, accounting, reporting and verification of greenhouse gas emissions to ensure the accuracy, completeness and consistency of the data.*

SEC. 4702. ADAPTATION FUND.

(i) *NATIONAL ADAPTATION STRATEGY.*—

(3) *NATIONAL STRATEGY.*—

(D) *SCIENCE ADVISORY BOARD.*—

(i) *ESTABLISHMENT.*—

(III) *represent a balanced membership between Federal, State, Tribal, and local representatives, universities, and conservation organizations.*

SEC. 7005. ADAPTATION ASSESSMENTS AND PLAN.

(a) *REGIONAL ESTIMATES.*—

(1) *ESTIMATES.*—

(A) *IN GENERAL.*—*The Administrator, in consultation with the officials described in paragraph (2) and relevant State and Tribal agencies, shall conduct 6 regional infrastructure cost assessments in various regions of the United States, and a national cost assessment, to provide estimates of the range of costs that should be anticipated for adaptation to the impacts of climate change.*

(b) *ADAPTATION PLAN.*—

(1) *IN GENERAL.*—

*(B) any other assessment prepared by a Federal, regional, State, **Tribal**, or local government entity that is—*

(2) INCLUSION.—

*(B) requirements for coordination between Federal, State, **Tribal**, and local governments to ensure that key public infrastructure, safety, health, and land use planning and control issues are addressed;*