Beyond the Fenceline: Tribal Survival Strategies and the New Federalism

In this era of renewed “collaborative federalism”—a euphemism for reducing federal support to states and tribes and turning more authority over to them—tribes have more reason than ever to develop new strategies to protect their environments and pursue economic progress and social justice. Recently I spoke with prominent tribal attorney Pilar Thomas to get her thoughts on how tribes can move forward most effectively on the environmental front, even as the federal government withdraws some of its traditional support and pursues deregulation on a level that hasn’t been seen in decades.

A member of southern Arizona’s Pascua Yaqui Tribe, Thomas has distinguished herself as one of Indian country’s best-known legal warriors. After graduating Magna cum Laude from the University of New Mexico Law School in 2002 with a certificate in Indian law, she entered the environmental fray with jobs that have included stints with the U.S. Department of Justice, the US Department of the Interior as Deputy Solicitor, and the US Department of Energy, working on clean energy and climate change for tribes.

She is presently Of Counsel with the law firm Lewis Roca Rothgerber Christie in Tucson, AZ. Her broad purview includes Indian law, tribal lands and natural resources, energy and other development, finance, utilities, and gaming. With her depth of experience in Indian country issues, Thomas is uniquely situated to offer fresh ideas for tribes to consider to help them survive—and thrive—in the face of Collaborative Federalism 2.0.

Please describe the present administration’s “collaborative federalism” approach to tribal environmental regulation.

A good place to begin to think about where tribes are vis a vis US EPA is to start with the Reagan administration. It’s clear, starting with the Clean Water Act amendments in the late 80s, and then the Clean Air Act amendments in the early 90s—both under Republican presidents—that those administrations supported the decentralization of federal authority, re-delegation back down to the state and tribal levels. The present policy

see FENCELINE on page 5
Happy Spring, everyone. “March” in the Diné language is “Woozhch’iid,” meaning “the baby eagle cries.” It is during this time of year we are blessed with many baby animals being born.

As many of you know, spring also means that the National Tribal Forum on Air Quality (NTFAQ) is just around the corner, and we’re excited to watch the event coming together, thanks to the combined efforts of all the planners and our host, the Fond du Lac Band of Lake Superior Chippewa. We’re especially pleased and honored that our keynote speaker this year will be the Honorable Karen Diver, whose leadership on behalf of the Fond du Lac Band of Lake Superior Chippewa and the Obama Administration, as well as her work internationally on behalf of indigenous people, is widely known. We look forward to hearing Honorable Diver’s address to NTFAQ participants.

ITEP’s air work in partnership with tribes across the nation continues on with courses, one-on-one technical and data-management support, and efforts to enhance the sustainability of tribal communities in the face of climate change. The Tribal Air Monitoring and Support (TAMS) Center is putting the finishing touches on its Technical Needs Assessment for Indian country, an important look at tribal technical air capacity and needs; the document will be added to the National Tribal Air Association’s (NTAA) Status of Tribal Air Report (STAR) that will be presented and released at this year’s NTFAQ.

The report required a lot of hard work, and we commend the TAMS Steering Committee and all those who participated for their efforts. Also at TAMS, after a brief absence, Kent Bartholomew is back serving as the Center’s Equipment Manager, keeping TAMS loan equipment up to speed and ready to send out to tribes who need it. Welcome back, Kent.

I am also pleased to announce the National Tribal Water Council’s new website is now on-line: www7.nau.edu/itep/main/ntwc/ITEP will be assisting the Council’s efforts to enhance and protect water resources throughout Indian country by providing administrative and technical support for the work of the Council. The Council has submitted two Comment Letters to EPA since October 2017 and is now working on a third. Please visit the website for more information on the work of the Council and to find out how you can get involved.

In January ITEP welcomed back Mehrdad Khatibi, whose role now includes assisting with the Volkswagen Settlement program. ITEP has been working with the trustee and providing technical assistance to tribes in support of the VW Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries. A total of 29 tribes filed with the courts their Certification of
The resort grounds include a hotel, pool and hot tub; conference center; shops; casino; and golf course. Three food venues at the resort include a sprawling buffet restaurant, casual café dining, and an elegant steakhouse, and numerous other eateries can be found in the nearby area.

This year’s NTFAQ is sponsored by ITEP, ITEP-TAMS, and the National Tribal Air Association. As always, Forum-goers can expect a wealth of learning and networking opportunities, access to resources, cultural encounters, and lots of fun. Included are numerous breakout sessions covering four topics: Air Quality Technical & Outreach; Indoor Air Quality; AQ Policy & Regulations; and Climate Change.

Attendees can look forward to numerous returning Forum favorites, including:

- pre-conference sessions on May 14, this year including workshops on Radon, the VW Settlement, TAS 101, Air Sensors, Air Quality Grants, and Communicating Climate Change
- a wide variety of breakout sessions
- networking opportunities
- Eco-Café
- the Virgil Masayesva Tribal Air Programs Excellence Awards and Banquet Dinner
- NTAA’s annual member meeting
- poster sessions
- air-tech company displays
- a birding tour
- a raffle of items donated by Forum participants and supporters
- an inspiring event first launched last year, Tribal Air Big Ideas, featuring notable voices offering their personal takes on a variety of air-related topics, and
- a 5K Fun Run/Walk on the closing day.

In addition, this year’s Forum offers some new surprises....

Karen Diver, this year’s NTFAQ keynote speaker, is well known in Indian country for her tireless work on Native rights and her superb tribal leadership. Among her many accomplishments, Ms. Diver is a former two-term Chairwoman of the Fond du Lac Band of Lake Superior Chippewas, an academic and activist, and a former Special Assistant for Native American Affairs in the Obama administration.

We look forward to welcoming this year’s keynote speaker, Karen Diver of the Fond du Lac Band, tribal air staff from dozens of tribes, EPA and other government representatives, academic and NGO participants, and air-industry vendors, and especially you, the tribal air community.

The National Tribal Forum on Air Quality 2018 promises to be another grand event. We hope to see you there. For applications and information, visit www7.nau.edu/itep/main/Conferences/confr_ntf
The course schedule can change. For updates, visit: http://www.nau.edu/itep/main/Training/training_air

Upcoming ITEP–AIAQTP Courses

GIS for Air Quality      Apr. 17–19  Las Vegas, NV
Air Quality in Alaska    Apr. 17–20  Barrow, AK
IAQ Diagnostic Tools for AK May 1–4  Tazlina, AK
MGMT of Tribal Air Prog. & Grants (Lower48) June 5–7  Flagstaff, AZ
Reviewing NSR Permits    Aug. 29–31  New Mexico

U.S. EPA Tribal Air Contacts
To contact U.S. EPA’s Tribal Air support staff, visit the web at: https://www.epa.gov/tribal-air

Images from Last Year’s National Tribal Forum on Air Quality

ITEP on the Web
From our home page you’ll find links to ITEP programs, info on upcoming events, training and support opportunities, and newsletters to keep you informed on our work in a variety of media. Visit us at: www.nau.edu/itep
FENCELINE– from front page

is really just ‘collaborative federalism 2.0,’ although there’s no mention of tribes in that federalism—it isn’t part of the model. But the idea, first espoused by Reagan, was treating tribes the same way states and local governments are treated, by pushing out as much responsibility to them as possible. That was the whole basis of Reagan’s policy, and EPA’s. With this administration, it seems to be on hyper-decentralization status.

The challenge tribes have now are that, one, most tribes need EPA to protect their communities and environments. And two, the present policy pushes tribes to focus on the state level to try to achieve their environmental protection, conservation, and preservation goals. And that isn’t always easy. Tribes cannot rely on the states to assist with on-reservation environmental issues because states lack authority on tribal lands. Environmental issues on surrounding lands, depending on which state you’re in, also pose real issues for tribes.

You can solve some on-reservation issues by addressing them yourself, through Treatment as State status. If a tribe has the internal capacity, they should be looking hard at doing so if they’re not already. If a tribe gets TAS status as the ultimate way to do it yourself, it can take on more air quality and water quality programs under that status. Just shy of that is the ability to obtain delegated authority from EPA for permitting and enforcement.

But you can’t solve off-reservation problems in the same way. You have to work with the state, and if the state’s not doing it, you have to go to EPA. But how many tribes, for example, challenge off-reservation permitting activities, either through the state’s process or by asking EPA to oppose a permit? Tribes have so much at stake in off-reservation environmental problems, and EPA will be a less reliable enforcer for tribes.

I think it’s the off-reservation issues that tribes are going to have a bigger problem with in the future. And that’s where I think this renewed move toward federalism—which is better described as EPA retreats from its federal enforcement role—poses the greatest challenge for tribes. Tribes will have a few options: stay on top of the state permitting process, monitor their permitting, rulemaking and legislation, push and push; you can avail yourself of interstate pollution rules with TAS status; and you can continue to push the EPA to keep them on top of things.

What’s an example of the kinds of challenges now in play?

The new Title V [major-source permitting] change is huge. A little history: Under the Clean Air Act, when a state issues a Title V operating permit to a major source, the EPA is entitled to review the permit. The EPA can object to the permit, or require other terms and conditions. If EPA doesn’t object, an interested party has a certain period of time to petition EPA to object. If EPA still doesn’t object, the interested party can sue EPA in court.

The question is, what is EPA objecting to? A Title V permit, good for five years, incorporates Title I permit requirements, plus compliance, monitoring and reporting requirements. The Clinton administration took the position, which was carried on through Bush and Obama, that when a Title V permit is reviewed, EPA can object not just to the terms and conditions of the T V permit, but to the terms of the underlying Title I permit.

The EPA doesn’t review T I permits issued by the state. However, EPA does have T V review process authority. Prior EPA administrations would also look at the T I permit during T V review. But the current EPA administration has reversed that position—based on their interpretation of the Clean Air Act—and now won’t look at the underlying T I permit. In effect, the EPA will not serve as a backstop anymore for challenging Title I permits.

So, if a tribe is concerned about an off-reservation air pollution source and is concerned about a T I permit, the tribe’s only option is to go through the state administrative and judicial review processes. This takes a lot of work, costs a lot of money, and most tribes can’t do it.

So with EPA stepping away from the old position, that puts everyone on notice that they must be more diligent at the Title I stage, that interested parties must go through whatever the state process is. Hardly any tribe has that capacity. Most tribes don’t pay attention to this. It’s been discussed briefly in some tribal forums, but it seems that the time is right for more local, or even regional or national discussion about tribal options and tools for responding to off-reservation pollution sources. Because if your reservation or community is victim to off-reservation pollution, the EPA won’t come to your rescue anymore.

I don’t want to frame this as criticisms but as opportunities—now more than ever. The game is with the states for just about everything on the level of energy, environment, ecological issues. Your air is generally someone else’s filthy air, your water is someone else’s filthy water, your energy is the same. But there are things you can do.

see FENCELINE on page 7
Northern Arizona University and the Institute for Tribal Environmental Professionals are pleased to offer unique, tribally focused professional development training to new and seasoned professionals through interactive online courses. Participants who complete a course will receive a certificate equivalent to the continuing education units (CEUs) identified for each course.

Visit [https://itep.scholarlms.com/catalog/](https://itep.scholarlms.com/catalog/) to view available courses.

**Newly available online courses**

*Tribal Strategic Planning: Ensuring Successful Development of Your ETEP.*

This course provides tribal environmental professionals with tools and resources to develop tribal-specific approaches to strategic planning with tribal leadership, elected officials, government agencies, and other entities when developing an ETEP (EPA/Tribal Environmental Plan) or other tribal strategic plans.

Registration for this online course, which carries 1.0 continuing education unit (CEU), is $300. Completing the class requires approximately ten hours of total learning time.

*Partnerships and Community Outreach.*

This course provides tribal environmental professionals with tribal-specific tools and resources to engage their community and other stakeholders in the development and implementation of their tribal work plans. Registration for this online course, which carries 0.5 continuing education units (CEUs), is $150. Completing the course requires approximately five hours of total learning time.

**Why is ITEP charging for these online courses when others are free?**

ITEP offers both free and for-fee courses, the costs determined by current funding sources. The online courses described above are for-fee and have paid instructors to ensure your individual questions are answered in a timely manner. Free courses, listed below, have been developed with federal grant funding and are facilitated by ITEP staff who work with volunteer subject matter experts to field questions.

**Courses currently available and free of charge**

- *Introduction to Brownfields* (0.4 CEUs)
- *Brownfields Tribal Response Program Fundamentals* (0.5 CEUs)
- *Radon Fundamentals* (0.7 CEUs)
- *Building Performance: Improving IAQ in Cold Climates* (0.8 CEUs)
- *Emissions Inventory Fundamentals* (5.0 CEUs)
- *Introduction to Rural Alaska Landfill Administration* (0.5 CEUs)
- *Residential Building Science Review* (0.4 CEUs)

**Benefits of NAU/ITEP online courses**

- The flexibility of being self-paced, allowing you to return to work on current courses where you left off
- Connections with other environmental tribal professionals through discussion forums
- Access to resources, videos, and certificates from previously completed courses

These online courses contain assignments, activities, quizzes, videos, tribal examples, discussion forms, and additional resources.

**Join us**

You can access ITEP’s online courses at your convenience by creating a free user account. Start now by visiting Create New Account! After setting up your own unique login and password, you can enroll in and access courses at any time.

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What are some approaches tribes can take to respond to these new regulatory realities?

There are lots of questions tribes should be asking: What are some other opportunities for tribes to refocus and repackage what has traditionally been a federally focused effort? How do we focus less on the federal side and more toward our respective states, our regions, other tribes, other resources? There are very few states that do not have an intertribal organization. How do we take advantage of state or regional inter-tribal organization to leverage the multiple-tribe representation they convey? How can we object, sue, participate, have our voices heard? How do you encourage tribes at the individual level to get engaged?

Here’s a question: Can tribes join together to form intertribal air quality monitoring groups? There are examples on the water side, such as in the Northwest, where tribes are all on same river system, so they get together and form a water quality monitoring consortium, some little tribes, some big. They all have the same shared issue. So maybe if tribes share the same airshed, even small tribes, maybe that’s a viable approach. Start up a tribal air-quality consortium, purchase some mobile monitoring units, drive around from one reservation to the next, so everybody has measurements.

You don’t have to be the only one to invest—five tribes can go in for two people, everyone sharing and providing other resources. Intertribal organizations on the state level can also be incentivized, and funded, to do this. You can also use the collective voice of multiple tribes to comment, object, petition, to push for tribal interests.

How have tribes typically worked with EPA on environmental challenges?

The tribes have a closer relationship with their respective regions – where most of the EPA permitting and enforcement work is done. Needless to say, this results in different levels of engagement across the country. As the new EPA administration’s de-regulation and enforcement positions begin to filter down into the regions, the working relationship between EPA regions and the tribes will likely change, but in what ways remain to be seen.

With the right structures, inter-tribal forums might be able to support the regional tribal operations councils to work through issues that arise from the new EPA positions, and help tribes retain the power they have collectively to improve the situation for everyone. They can work through questions like, ‘How do we leverage a potential benefit to improve our situation?’ So for example, maybe a benefit of pushing responsibilities back out of EPA getting out of the ‘heavy-handed oversight business,’ might involve tribes arguing collectively, ‘If you’re going to push these responsibilities back out to us, okay, so you need to make it easier for us to get Treatment as a State status, not harder.’ There can also be a regional or local voice that supports the tribes’ regional or local needs and facilitates participation in state and federal permitting, regulation setting, and other processes. Maybe there are state opportunities to promote or require more cooperation with tribes on environmental-protection issues.

How do you think tribes might best go about leveraging their relationships with their states? What about where the relationship is contentious?

I think one of the best opportunities for tribes to leverage relationships with their states, especially gaming tribes, is by talking about everything but gaming. Show up, lobby your state representatives, try to testify on bills that do not address tribal-specific issues but are important to the tribes, like environmental protection.

You’re showing policy makers and legislators that you understand and appreciate that what happens in the state affects you. If you have water issues, you’re probably talking with the water people; if you have lots of dependent children issues, foster-care issues, you’re talking with Child Protective Services. Use those relationships as a way to talk about environmental issues.

Or parley the gaming relationship to talk about air quality, water quality, clean energy, regional economic development. Use your connection with a state or local government and figure out how you can leverage that.

Tribes that have contentious relationships with the state are definitely in a tough spot with the changes under this EPA administration. This is one area where tribal collective action may be most important.

So, maybe some inter-tribal organizations that have developed good relationships with their states can help—with training, and sharing of information. Not to volunteer them, but an example might be having the board of the Inter-Tribal Council of Arizona go to South Dakota and meet with the tribes there, maybe facilitated by the United Tribes Technical College or some other academic group. They present on, ‘Here’s our model for Arizona on how we work with our state counterparts.’

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This is an area in which I think the feds have let the tribes down. An agency gets some money, and they hire more people. And I have to ask, ‘Why are you building your capacity? Why not send that money out to tribes to build their own capacity.’ The BIA should consider financially supporting the tribal leaders and staff on developing relationships with the states. The BIA might even convene regional and local conversations between tribes, state and local governments and the federal
You’ve talked in the past about partnering with private industry, with non-governmental organizations and local governments. Can you talk about that kind of partnering?

Tribes have lots of natural allies. On the environmental side, some are obviously the NGOs, the non-profits. We saw how that worked out with the Moapa Tribe in Nevada, with the Sierra Club helping them decommission a coal-fired power plant. That’s a model lots of tribes can use; there’s no sense fighting on your own.

You have to be cognizant of the practical realities of what you’re trying to accomplish. And then find allies who can help you do it.

On the corporate side, there are some 1500 companies now that have signed on to the “We Are Still In,” campaign, expressing their intention to continue reducing their greenhouse gases despite the president pulling us out of the Paris Climate Accord. The WASI movement has enlisted cities, counties, states, nonprofits, corporations. The thinking is, ‘We’re the many, and we’re going to continue on.’

So if a tribe wants to launch a solar program, is there a city, a nonprofit, a corporation nearby that can help? Probably. A good example is here in Arizona. The city of Flagstaff has adopted a 100% renewable energy goal. The city has now entered into a power purchase agreement with the Hopi Tribe to supply solar power to the city. The city of Tempe [in metropolitan Phoenix] also now has a 100% renewable policy. Tribes close to these cities—and other cities around the country that have done the same thing—might consider approaching the cities to say, ‘You should consider giving preference for renewable projects on tribal land—you could say that in your renewables policy.’

Tribes can also approach their respective state utility commissions and say, ‘You should give preference on tribal lands for your renewable projects.’ And if it’s 10, 22, 100 tribes showing up.... You don’t know how they’ll respond until you ask them.

On the private side, you have the biggies, Google, Apple, Walmart, Home Depot and all these others who have committed to going 100% renewable, or to increasing their sustainability. Tribes can seek to align with them in the same way. Tribes can also align with small businesses. Of the 1500 companies in the WASI campaign, more than 1000 of them are small businesses. So you look through that list, see which of those companies are near you, and approach them and say, ‘We’re willing to work with you to develop clean energy resources. Let’s work together, let’s go to the utility commission and tell them you have this choice. Everyone should be preferring tribal energy. You can buy your power from us.’

Tribes could be working with Tesla, all these people trying to electrify the charging system. Why not have charging centers on tribal lands? If you want to promote ‘Tesla tourism,’ put some charging stations out there on the tribal roads. Ask how you can partner with Clean Fleets to promote either electrification or charging stations. If I’m the little Hopi Travel Center, I should have charging stations all over the place—everyone stops there! So you’re building customers, truckers are going back and forth, you’re promoting tribal tourism and keeping your environment cleaner.

If a company commits to 100% renewables, tell them you want to be part of that 100%. Lots of companies have vendor and supplier diversity goals, and it shouldn’t be about just buying pencils—how about 20% of your clean power goals? It’s supporting indigenous communities, supporting their goals, supporting jobs. If you’re going to buy power from a wind farm out in the middle of Iowa, why not buy it from a wind farm on the Rosebud Reservation?

How do tribes build their capacity to pursue these kinds of efforts?

Well, they first have to know what’s going on. Having someone in the tribe dedicated to that kind of awareness would be a good thing, people whose job is to think about these kinds of questions: What are our issues? What are possible solutions? Who can we partner with? What resources do we need to go after these opportunities? Who are our possible allies?

It’s not that we shouldn’t be trying to maintain our relationship with the federal government, and keeping...
its feet to the fire. What little funding and support we’re getting is important. But there are other avenues to progress for our communities. If it’s environmental, the ball has always been in the states’ courts, because the Clean Air and Clean Water Acts have delegated all that to the states. Some tribes have done a great job in working with their state counterparts. Other examples include working with natural allies to force change at the state level. If one thing doesn’t work, try something else.

But tribes can also look to the private sector, industry, local governments, non-profits for support, and even capacity-building—such as the 100 Cities program under the Rockefeller Foundation. That program supports local government capacity-building for climate change adaptation and resiliency planning. Maybe those are the allies we really need, and the resources we should pursue. If you’re getting what you need from the federal government, that’s great. But it still never hurts to look elsewhere anyway.

Beneficiary Status for the first round of funding, which officially closed on January 2, 2018. Of these 29 tribes, 27 submitted their Beneficiary Eligible Mitigation certification to the courts and the rustee by the required deadline. Quite an accomplishment! The present deadline for the second year of funding is set for September 1, 2018. The ITEP staff will continue to be available to provide tribes with technical support, answer questions you may have, and assist in reviewing beneficiary forms. For more on this program, visit www7.nau.edu/itep/main/volkswagensettlement/

Lastly, I would like to announce that three of ITEP’s long-time staffers and important pillars for our air quality programming will be retiring: Patricia (Pat) Ellsworth, Dennis Wall and Glenn Gehring. It’s a bittersweet time for all of us at ITEP, and I know that’s true for many of you who worked with Pat, Dennis and Glenn. ITEP is founded on an incredible team, and we will truly miss them. I will have more in the future to say about each one of them, but in short, here is the start of my gratitude.

Let’s start with Pat Ellsworth. She has been with ITEP since the beginning. Pat—along with Christy Nations—are the matriarchs of ITEP. I have leaned on Pat’s quiet but powerful wisdom time and time again. She has a gift of “knowing how to teach” and has been the foundation to a majority of ITEP’s air training courses. Each year she carefully gauges Indian country’s air-program needs and develops a full curriculum to guide the upcoming year of tribal air quality courses. If you can imagine how much has changed in the last 25 years in air, you will know that she has a wealth of knowledge.

Next, I would like to say Dennis Wall is ITEP’s historian. He has been ITEP’s Editor for Native Voices for 20 years, carefully crafting stories and taking beautiful pictures of all the events that ITEP oversees, including the majority of National Tribal Forums on Air Quality. Native Voices is his masterpiece that captures Indian country’s richness and all your hard work. He also edited the many training manuals for our air courses. I personally thank him for helping me with all my editorials.

Finally, we have Glenn Gehring. He has been with ITEP since 2005 (and taught at our air courses since 2002). Glenn is a gentle genius—many of you know exactly what I mean. His knowledge of the technical side of air quality is amazing. He teaches with passion and precision. He has traveled all over this country assisting in the field, finding the problem and solving it. He has assisted many of you in setting up and troubleshooting your systems. He is relentless in his devotion to helping tribes maintain clean air.

I could go on and on about each of them, but I’ll save that for another time. We will take some time at NTFAQ to honor these three individuals and ask that you join us. Many of you may ask, what will ITEP do after all these departures? Well, we have been shaping a work force development plan for some time now. Of course, there is no way to completely fill their shoes, but we are working hard to make their transitions smooth so that we can continue to provide the level of service that ITEP has always offered.

More about these transitions in the future. We look forward to seeing you at the National Tribal Forum in May!
The National Tribal Air Association keeps abreast of federal policy that might impact Native American communities and informs tribal leaders on ways they can engage in the process of shaping such initiatives. Part of their support is the creation of “policy response kits,” which they develop after sorting through the often-complex federal rule-making process. By analyzing potential impacts of proposed policy on tribes and providing tribal leadership with information on how such initiatives might affect their communities, the NTAA seeks to assist tribes who choose to lend their voices to the federal rule-making process.

One component of the response kits are sample comment letters that tribal leaders can employ as templates or information sources as they formulate their responses to proposed federal policy initiatives. The following is a portion of the NTAA’s sample comment letter on the proposed repeal of the federal Clean Power Plan, a pollution-reduction strategy introduced by the Obama Administration.

Indian Tribes and Climate Change

General

Electric generating units (EGUs) are the single largest source of CO₂ pollution in our nation, emitting approximately 2.3 billion tons annually which comprises 40% of the carbon pollution emitted in the U.S. CO₂ pollution impacts human health and the environment in a number of ways. The impacts vary regionally and seasonally and may include longer, more intense and more frequent heat waves; more intense precipitation events and storm surges; and less precipitation and more prolonged drought. The negative health effects associated with climate change are especially damaging for vulnerable populations including the elderly, young children, and those individuals already in poor health.

Indian Tribes and Alaska Native Villages are not immune from the effects of climate change. Like the rest of the nation, its populations are suffering from the health effects of climate change. Further, Tribes are seeing the effects of climate change through increased storm surges, erosion, and flooding; prolonged droughts never seen in modern times; and increased fires and insect pest outbreaks in their forests. These are just a few snapshots of what is happening on and around the lands of the nation’s 573 federally recognized Tribes.

Indian Tribes are also affected much differently than the rest of the nation as their cultures are highly integrated into the ecosystems of North America, and many Tribal economies are heavily dependent on the use of fish, wildlife, and native plants. Even where Tribal economies are integrated into the national economy, Tribal cultural identities continue to be deeply rooted in the natural environment. As climate change disrupts biological communities, the survival of some Tribes as distinct cultures may be at risk. The loss of traditional cultural practices, due to climate-driven die-off or range shift of culturally significant plant and animal species, may prove to be too much for some Tribal cultures to withstand on top of other external pressures that they face.

Climate-driven disruption of biological communities is also having a considerable effect on the treaty rights of...
Indian Tribes. Many such treaties preserve hunting, fishing, and gathering rights for Tribes on their lands and in the usual and accustomed areas. Some Tribes are finding that the animals and/or plants on which they depend for their cultural practices and identity have either migrated to lands not under their control or have disappeared altogether. How does one begin to value this type of loss for a Tribe? Further, CO₂ emitted today can remain in the atmosphere up to 100 years, meaning that the full impacts of these emissions on Tribes and their culture may not be seen until many years into the future.

**Reminder of CPP Benefits**

The urgency and need to address climate change and its impacts to Indian Tribes, and the nation as a whole, increases with each ton of CO₂ emitted into the atmosphere. Our nation and other parts of the international community were hit hard this year with multiple hurricanes and wildfires, all of which were intensified due to the changes in our climate system from an increase in the percentage of atmospheric carbon, methane, nitrous oxide, and other GHGs. These natural disasters cost our country billions of dollars, as well as the loss of lives and livelihoods. The CPP, which investments a number of Indian Tribes have made. The Proposed Repeal would likely stymie these investments.

A significant degree of analysis was conducted by EPA in support of the CPP. EPA calculated that the CPP will prevent up to 90,000 childhood asthma attacks, 300,000 missed work and school days, 1,700 hospital admissions, up to 1,700 heart attacks, and 3,600 premature deaths annually by 2030. Unfortunately, these tremendous health benefits of the CPP would not come to fruition if the Proposed Repeal was adopted. Further, the expected value of the public health and climate benefits generated by the CPP, which could help spark economic growth, would evaporate. These benefits are worth an estimated $34 billion to $54 billion compared to $8.4 billion in costs. The CPP also incentivized major investments in energy efficiency and renewable energy, such as solar and wind power, which investments a number of Indian Tribes have made. The Proposed Repeal would likely stymie these investments. It is based on these public health and climate benefits, and the promotion of energy efficiency and renewable energy, that the NTAA recommends EPA forego a repeal of the CPP.

**Tribal Consultation**

A unique government-to-government relationship exists between Indian Tribes and the federal government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations, and executive orders (EOs). Consultation is a core element of this government-to-government relationship. However, EPA has chosen not to engage in government-to-government consultation with Tribes regarding the Proposed Repeal and Replacement, finding that the “[CPP] does not have tribal implications as specified in Executive Order (EO) 13175” We disagree wholly with this assertion by EPA. The Proposed Repeal and Replacement would erase the health and environmental benefits achieved by EPA as identified in a 2015 CPP Regulatory Impact Analysis. Native American Tribal communities possess unique vulnerabilities to climate change, particularly those impacted by degradation of natural and cultural resources within established reservation boundaries and threats to traditional subsistence lifestyles. Tribal communities whose health, economic well-being, and cultural traditions that depend upon the natural environment will likely be affected by the degradation of ecosystem goods and services associated with climate change.

For this reason and EPA’s call for cooperative federalism with state and Tribal governments to address environmental problems collectively, EPA should have consulted with Indian Tribes in advance of issuance of the Proposed Repeal and Replacement and should consult with Indian Tribes moving forward.

On November 6, 2000, U.S. President Bill Clinton issued EO 13175, “Consultation and Coordination with Indian Tribal Government.” A central tenet of EO 13175 is the need for federal agencies to engage in meaningful government-to-government consultation with Indian Tribes if any of their policy actions could have impacts to Tribal communities. Subsequently, on November 5, 2009, President Barack Obama issued a Presidential Memorandum on Tribal Consultation (Presidential Memorandum), committing to such consultation with Indian Tribes and directing each federal agency head to submit a “detailed plan of action the agency will take to implement the policies and directives” of EO 13175. EPA has adopted such a plan of action which Tribes expect to be followed, particularly when EPA takes a drastic action like repealing and replacing the CPP.

*To read the entire sample CPP comment letter (which includes citations of supporting literature) and learn more about NTAA’s Policy Response Kits, visit: www7.nau.edu/itep/main/ntaa/PolicyResponseKits/CPPRepeal/.*