



March 1, 2010

Dear Senator:

On behalf of the National Tribal Environmental Council (NTEC) and its more than 180 member tribes, we strongly urge you to oppose Senator Lisa Murkowski's Resolution of Disapproval (S.J. Res. 26) and any similar legislative effort to prevent the U.S. Environmental Protection Agency (EPA) from regulating greenhouse gas (GHG) emissions under the Clean Air Act (CAA). Such efforts would not only undermine a 2007 Supreme Court decision on GHGs and block a subsequent endangerment finding made by the Agency, but would also remove a proven tool from the proverbial table that has been successfully used to address air pollution over the past 40 years.

In *Massachusetts v. EPA*,<sup>1</sup> the U. S. Supreme Court held that the EPA has the authority to regulate GHG tailpipe emissions from motor vehicles and must do so if it finds that these emissions "cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare." On December 7, 2009, the Agency made such a finding under section 202(a) of the CAA, a finding based on an extensive body of peer-reviewed science that held elevated levels of GHG emissions are the result of human activity that endanger "the public health and welfare of current and future generations."<sup>2</sup> Furthermore, "without substantial and near-term efforts to significantly reduce emissions," the accumulation of these GHG emissions will continue and "lead to ever greater rates of climate change."<sup>3</sup>

Intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare" of our nation, the CAA provides the best means possible short of legislation to address those issues identified in EPA's endangerment finding. The EPA also has a long and proven track record of effectively implementing the Act to force the significant reduction of air pollutants such as lead, ozone, particulate matter and sulfur dioxide.

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<sup>1</sup> *Massachusetts v. EPA*, 549 U.S. 497 (2007).

<sup>2</sup> See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under §202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66523 (Dec. 15, 2009).

<sup>3</sup> *Id.* at 66,518.

It is because of this record on the part of EPA that NTEC has supported the Agency's efforts over the past year to develop sensible measures to focus CAA efforts on GHG tailpipe emissions from new vehicles. Addressing vehicle GHG emissions under the Act, however, will force the regulation of stationary sources emitting 100- and 250-tons per year (TPY) of GHGs, the kind of sources which can be found in many tribal communities. This is why NTEC supports EPA's proposed "tailoring rule" which takes a significant step towards regulating and reducing GHG emissions by enabling workable implementation of the Act's Prevention of Significant Deterioration (PSD) and Title V operating permit mandates for stationary sources by adjusting the TPY thresholds,<sup>4</sup> thereby limiting the number of sources affected by the CAA with respect to GHG emissions.

Enabling the EPA to regulate GHG emissions under the CAA also serves to fill a legislative void for doing so. NTEC has worked fervently with Senate members to help craft comprehensive climate and energy legislation that addresses the adverse impacts of climate change facing Indian tribes and Alaska Native villages as a result of increasing GHG emissions. Some of these impacts are not unlike those being faced by other governmental jurisdictions such as increasing temperatures, rising sea levels, heightened drought conditions, and extended wildfire seasons. Indian tribes and Alaska Native villages, however, are additionally affected as many of their cultures and identities are integrated into the ecosystems of North America. As climate change disrupts biological communities, the survival of some tribes and villages as distinct cultures may be at risk. The loss of traditional cultural practices, because important plants and animals are no longer available, may prove to be too much for some tribal cultures to withstand on top of the external pressures they have faced during recent generations.

Therefore, until legislation is forthcoming that is enacted by Congress and the President that addresses the needs and concerns of Indian tribes and Alaska Native villages with respect to GHG emissions, NTEC strongly urges you to oppose Senator Murkowski's Resolution and any similar efforts to derail EPA efforts to regulate such emissions under the CAA. Common sense dictates that the CAA remain as a viable tool for helping reduce GHG emissions, and ultimately stem and reduce the adverse impacts of climate change.

Sincerely,



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National Tribal Environmental Council



Kim Gottschalk  
Native American Rights Fund  
representing the National Tribal Environmental Council

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<sup>4</sup> See Proposed Rule: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55,292 (October 27, 2009).