



July 26, 2010

Dear Senator:

On behalf of the National Tribal Environmental Council (NTEC) and its 187 member tribes, we strongly urge you to oppose S. 3072, legislation sponsored by Senator Jay Rockefeller's (D-WV) that would block President Obama and the Environmental Protection Agency (EPA) from enforcing the Clean Air Act (CAA) to fight global warming for at least two years. Such legislation would not only undermine a 2007 Supreme Court decision on greenhouse gases (GHGs) and delay full implementation of a 2009 Agency endangerment finding, but would also hamstring EPA's regulation of GHG emissions under the CAA, a proven law for successfully addressing air pollution during 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 a subsequent finding under section 202(a) of the CAA, a finding based on an extensive body of peer-reviewed science, that elevated levels of GHG emissions are the result of human activity which 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 for addressing the issues and concerns identified under EPA's endangerment finding. The Agency has a long and proven track record of effectively implementing the Act by addressing such matters as the reduction of children's exposure to toxics by phasing out leaded gasoline, the achievement of substantial reductions in dangerous smog and soot pollution in tribal and non-tribal communities alike, and the preservation of waterways and our environment from damaging acid rain.

The largest generators of GHG emissions, namely coal-fired power plants and oil refineries, dominate the nation's energy sector and have posed serious threats to public health and the environment for decades. Many such facilities are also disproportionately located near tribal

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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.

communities, thereby adding to the air pollution burdens already facing these communities such as heightened levels of ozone, particulate matter and sulfur dioxide. The EPA has also found that the impact of these pollutants will intensify as a result of climate change.

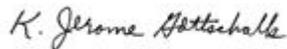
Senator Rockefeller's legislation would therefore extend the burden of climate change and localized air pollutants on tribal communities by placing a stop-work order on the comprehensive regulation of GHG emissions under the CAA for at least two years. This is a delay that Indian tribes can ill afford as their communities experience firsthand the impacts of climate change such as increasing temperatures, rising sea levels, heightened drought conditions, and extended wildfire seasons. The distinct cultures of many such tribes are also being adversely affected and placed at risk as the ecosystems in which they are integrated are being disrupted by climate change. The loss of traditional cultural practices, because important plants and animals are no longer available, may prove to be too much for some tribes to withstand on top of the external pressures they have faced during recent generations (e.g., pollution, land encroachment, disease).

Common sense dictates that a delay in regulating GHG emissions under the CAA is unwarranted and inappropriate, particularly as tribal communities fight to maintain their very existence in the face of climate change and its adverse impacts. NTEC therefore strongly urges you to oppose S. 3072.

Sincerely,



Robert F. Gruenig  
National Tribal Environmental Council



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