



Improving Tribal Prospects under America's Climate Security Act (S. 2191)

by Robert Gruenig, Senior Policy Analyst

Although it's only January, time is quickly running out for the current Congress to get comprehensive climate change legislation passed and sent to the President for his signature. While the House of Representatives has yet to act on such legislation, the Senate has been moving swiftly forward and offers the best hope of passing a bill, namely the Lieberman-Warner Climate Security Act of 2008 (S. 2191), a bill that is expected to cap more than 80 percent of the nation's greenhouse gas (GHG) emissions, with such emissions generated by the electric power, industrial and transportation sectors. With these reductions and additional ones expected as a result of energy efficiency provisions in the bill, total U.S. GHG emissions are expected to decline 62-66 percent (based on a recent joint analysis by the Natural Resources Defense Council and World Resources Institute). The bill, unlike former climate change legislation introduced in the Senate, acknowledges the nation's tribes and the need to provide them with resources to address the adverse impacts of global warming currently facing their communities. While the bill moves in the right direction by providing these resources, much more is necessary to assure that tribes are adequately equipped and protected from global warming impacts. The National Tribal Environmental Council (NTEC) continues to work with members of Congress concerning ways that the Lieberman-Warner bill might be improved to the benefit of tribes, but the success of such efforts will hinge on tribal leaders throughout the nation making their voice heard.

Much has happened with respect to the Lieberman-Warner bill, from the time when a prospective summary was made publicly available in August 2007 to when a full Senate Environment and Public Works committee markup took place in December of the same year. The giveaway of emission allowances to industrial facilities, the same facilities that have historically contributed to global warming, has decreased whereas states and other entities designated for serving public purposes have seen an increase in their emission allowances or the proceeds made available by the sale of such allowances. In the middle of all this and flying somewhat under the Senate's radar screen are Indian tribes which face the daily, adverse impacts of global warming.

Within the Lieberman-Warner bill are two provisions specific to Indian tribes, with each provision establishing a separate tribal set-aside. The first set-aside, namely 0.5 percent of the bill's annual emission allowances through 2050, would be managed by the U.S. Environmental Protection Agency (EPA) and made available to tribes to undertake activities that "deliver assistance to tribal communities within the United States that face disruption or dislocation as a result of global warming" (see section 3303(d)). The projected monetary value of this set-aside is between \$577 million and \$961 million, with the value increasing over time between 2012 and 2050 (e.g., \$577 million in 2012 and \$961 million in 2050). The second set-aside, namely 1 percent of the bill's Adaptation Fund, would be managed

by the Department of the Interior and made available to tribes to undertake adaptation activities through the tribal wildlife grants program of the U.S. Fish and Wildlife Service (see section 4702(b)(4)). The projected monetary value of this set-aside is aggregated at \$1.76 billion for the period 2012 through 2030. While each set-aside makes substantial resources available to the nation's tribes, the push to improve the bill to the benefit of these tribes needs to continue. NTEC has closely followed the bill from its early beginnings to the present, utilizing the time in between to work with Senators and their staff to include new and improved tribal provisions in the bill.

From now until the Lieberman-Warner bill hits the Senate floor is perhaps the best and last real opportunity to get improvements made to the bill on behalf of the nation's tribes, an opportunity that NTEC has acted on through recent communications and visits with Senate staff. While NTEC has provided

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a number of recommendations, revealing most at this time would be premature and could negatively impact our efforts. One such recommendation, however, warrants mention and perhaps can be of the type that individual tribes and their leaders could carry to Washington, DC through their respective Senators.

Section 3303(d)(1)(A) of the bill directs the EPA to distribute emission allowances directly “among tribal governments.” Tribes, for the most part, are not in a position to utilize emission allowances because they are not owners or operators of regulated facilities of the type that would utilize such allowances to manage their greenhouse gas emissions. Practically speaking, tribes need funding instead of allowances to address adverse climate change impacts. The bill instead provides them with physical allowances for which they would be required to sell prior to being able to address the adverse impacts of global warming facing their communities. As a general rule, however, tribes lack the expertise and administrative capacity to manage and sell allowances, never being included in other cap-and-trade programs implemented on local, regional or national basis. Furthermore, requiring tribes to convert allowances into money could cause unnecessary delays in their efforts to address climate change impacts. NTEC would therefore recommend that the EPA annually allocate the aforementioned 0.5 percent tribal set-aside to the Climate Change Credit Corporation created under the bill. The Corporation would then be required to annually auction these allowances and deposit the proceeds into a “Tribal Climate Change Assistance Fund” for which the EPA would have access to and subsequently make available to tribes to address adverse climate change impacts. Additionally, tribes would not be required to obtain “treatment as a state” status under section 301(d) of the Clean Air Act to access the proceeds, since monies obtained from the fund would not go toward any regulatory program identified under the Act.

Tangentially related to the proposed Tribal Climate Change Assistance Fund is how the bill raises revenue. The aforementioned Climate Change Credit Corporation assumes control over a portion of the bill’s emissions allowances with a primary responsibility of the Corporation being the auctioning of these allowances, thereby generating revenues for a series of funds designated for specific public purposes. There are currently seven funds identified under the bill for such purposes, with these funds referred to as the Energy Assistance Fund, Climate Change Worker Training Fund, Adaptation Fund, Climate Change and National Security Fund, Bureau of Land Management Emergency Firefighting, Forest Service Emergency Firefighting Fund, and Climate Security Act Management Fund (see section 4101). Raising revenues, however, has traditionally been the role of Senate appropriators, namely individuals like Robert Byrd (D-WV) and Pete Domenici (R-NM). Politically speaking, this is a direct affront to their senatorial jurisdictions which could create some degree of controversy and potential opposition to the bill when it moves before the full Senate. If it is enough to prevent the bill from passing the Senate, however, remains to be seen, but an interesting thing to be aware of nonetheless.

As noted in previous Insights pieces about the Lieberman-Warner bill, NTEC remains available to assist tribal leaders in their efforts to make others in Washington, DC aware of their specific issues and concerns about the bill. For those interested in assistance from NTEC, please contact Jerry Pardilla, NTEC Executive Director, via phone at 505-242-2175 ext. 104 or e-mail at jpardilla@ntec.org. Furthermore, if you have any questions about the bill itself or any other climate change related activities taking place in Congress, please contact Bob Gruenig via phone 505-242-2175 ext. 103 or email at bgruenig@ntec.org.

SECURE Water Act (S. 2156) to Assess Long-term Availability of Water Resources

The SECURE Water Act (S. 2156) was introduced by Senator Bingaman (D-NM) on October 4, 2007. This bill was co-sponsored by Senators Maria Cantwell (D-WA), Pete Domenici (R-NM), Tim Johnson (D-SD), Ken Salazar (D-CO), and Jon Tester (D-MT). This bill proposes to authorize and facilitate the improvement of water management by the Bureau of Reclamation, to require the Secretary of the Interior and the Secretary of Energy to increase the acquisition and analysis of water resources for irrigation, hydroelectric power, municipal, and environmental uses.

S. 2156 is concerned about future adequate and safe water supplies in the United States, particularly to support increasing populations, economic growth, irrigated agriculture, energy production, and protection of aquatic ecosystems while facing the uncertainty posed by global climate change. In the findings, this bill asserts that states bear the primary responsibility and authority for managing water resources, but the federal government should support the states, regional, local and tribal governments by carrying out nationwide data collection and monitoring activities, research, and activities to increase the efficiency of water use.

S. 2156 requires certain federal agencies to assess risks to water resources, develop strategies to ensure that long-term water resources management is sustainable; improve the understanding of variability in the water cycle; identify new supplies of water; analyze the impacts of human activity on water and ecological resources; and to assess future availability of surface and groundwater supplies.

The specific agency actions are outlined below:

The Secretary of Interior is required to carryout a number of actions to include:

- 1.establishing a climate change adaptation program that assesses best scientific information about presently observed and

future impacts of global climate change on water resources, and assesses risks to water supply of major reclamation river basins, and develops monitoring plans and strategies to mitigate and adapt to impacts to water supplies;

2. conducting feasibility studies for implementing each mitigation and adaptation strategy;
3. providing funding for water management improvement;
4. establishing and leading a climate change and water intergovernmental panel;
5. reviewing the national streamflow information program;
6. establishing a water use and availability assessment program; and
7. reporting to Congress about the effects and risks resulting from climate change on water resources; and a detailed assessment of availability, significant trends, usage of surface and groundwater, water use conflicts or shortages or factors that cause or will likely cause conflict or shortage.

The Secretary of Energy is required to assess the effects and risks resulting from global climate change with respect to water supplies required for hydroelectric power generation at federal water projects.

S. 2156 has some provisions for tribes, but it deserves attention and comments from tribes to ensure that tribal consultation, participation, and rights are addressed in each element of the SECURE Water Act. Of particular concern is that this bill does not explicitly recognize tribal authority with respect to water resources, and it fails to address tribal treaty and water rights. Several major river basins are specifically named in the bill, particularly the Colorado River, Columbia River, Klamath River, Missouri River, Rio Grande, Sacramento River, and San Joaquin River.

This bill was referred to the Committee on Energy and Natural Resources, and a hearing was held on December 11, 2007. The full text of S. 2156 can be found at: <http://thomas.loc.gov> (The Library of Congress THOMAS).

Proposed Amendments to National Climate Protection Act Do Not Include Tribal Role in National Plans

Senator Maria Cantwell (D-WA) introduced S. 2355, known as the Climate Change Adaptation Act, on November 1, 2007. Joining as co-sponsors in December were Senators John Kerry (D-MA), Amy Klobuchar (D-MN), and Frank Lautenberg (D-NJ). S. 2355 proposes to amend an existing law, the National Climate Protection Act (15 U.S.C. 2901), which was originally passed in 1987 and later amended in 2000. The purpose of this existing law is to assist the Nation and the world to understand and respond to natural and man-induced climate processes.

The newly proposed amendments would be a major overhaul, first by renaming the original law as the Climate Change Adaptation Act. These new amendments propose to enhance the ability of the United States to develop and implement climate change adaptation programs and policies, and for other purposes. The key provisions are summarized below:

1. The President is to provide Congress with a 5-year national strategic plan to address the impacts of climate change, and requires an update on a 5-year cycle;
2. Congress authorizes appropriations of \$10 million for each of the fiscal years 2009 to 2013 to develop the strategic plan;
3. The Secretary of Commerce is required to conduct regional assessments of the vulnerability of coastal and ocean areas and resources;
4. The Secretary of Commerce is required to submit to Congress a national coastal and ocean adaptation plan;
5. The Secretary of Commerce is to provide technical planning assistance and products;
6. The Secretary shall provide grants of financial assistance to coastal states with approved coastal zone management programs; and
7. Congress authorizes \$35 million for each of fiscal years 2009 to 2013 to develop the coastal and ocean adaptation plan.

In each of the key provisions outlined above, tribes are not mentioned. This is a glaring omission as state and local governments, and nongovernmental entities are specifically mentioned and accounted for in the planning processes. This bill warrants greater attention because tribes should be part of these processes to ensure that the national strategic plan, and the coastal and ocean adaptation plan not only reflect their impacts, but also include tribes in the adaptation or mitigation strategies and plans.

This bill was referred to the Senate Commerce, Science and Transportation Committee, and a hearing was held on December 4, 2007. S. 2355 was favorably reported out of committee. The full text of this bill can be found at: <http://thomas.loc.gov> (The Library of Congress THOMAS).



NTEC Staff Profile



Lewis McLeod
NTEC's Tribal Director
of the Western Regional
Air Program [WRAP]

I want to give back to tribes on a larger scale, and know that I did something to truly help tribes in air quality," said Lewis McLeod from NTEC's offices in Albuquerque, NM recently.

So far, McLeod is moving in the right direction to see his vision to fruition. McLeod, who currently resides in Montana, is working hard to make contacts and partnerships between NTEC and colleges and universities in the Pacific Northwest.

As NTEC's co-director of the Western Regional Air Partnership (WRAP), McLeod has worked diligently to develop resources and forge alliances with the goal of giving back to tribes. The WRAP is a voluntary organization of western states, tribes and federal agencies, and is administered jointly by the Western Governor's Association and NTEC. "WRAP grew out of the Grand Canyon Visibility Transport Commission," explained McLeod. "What I think is important is to make sure that the tribes have the opportunity to come to the table early on in discussions with the western states and the federal land managers." McLeod feels that by gathering the data and personnel through the alliances he's established, the projects and planning processes developed by the WRAP become easier to implement and

more accessible to tribes. "What I am working toward through these partnerships is developing the staff and personnel necessary to help tribes in whatever way possible, whether technically, administratively, or whatever their needs are," explained McLeod. "There are a lot of great projects and ideas for tribes, and by providing the manpower and data resources, NTEC can make things happen, and that's where these partnerships come into play."

McLeod feels that there has been significant progress in gaining visibility for tribes in the Western U. S. "The EPA has been more tuned into tribal issues and as a result, has been more tuned into state issues," surmised McLeod. He wants to be sure that, through the WRAP program and partnerships, tribes will be able to come in at the *beginning* of projects and have a seat at the table *early on*. "In the past," said McLeod, "tribes were mostly ignored, but now it appears that the visibility problem is solved, and so we need to continue to move forward." The partnership that has been forged between Federal land managers, Tribes and States has, in his view, saved the EPA and States a lot of money and resources. "Many times, States will move forward on a project, and when it appears that the outcomes won't be successful, the project is abandoned," explained McLeod. "But this is where the partnerships with tribes benefit states, by providing similar data so that the states won't have to re-invent the wheel, so to speak. We have a lot of smart Indians out there, and by drawing on data and knowledge from the Tribes, everyone benefits."

McLeod's expertise in the tribal environmental arena has been cultivated over a lifetime of environmental work. After serving seven and a half years in the Marine Corps upon graduating high school, McLeod spent yet another fifteen and a half years in the Air Force, during which time he traveled overseas. In 1988, McLeod decided to go to work for his Tribe (Salish & Kootenai) as a Tribal Air Quality technician. He wanted to give back to his Tribe, and he did so for the next sixteen years, eventually becoming the Air Quality Program Manager, in addition to furthering his education.

McLeod became affiliated with WRAP in 1994 and decided to go to work for the EPA in Region 10 as a tribal Project Officer in Seattle, WA. He stayed in touch with Bob Gruenig, who eventually convinced him to come to work with NTEC. McLeod has been

able to work from his home in Montana, and his proximity to the colleges and universities and tribes in the Western U. S. has helped him nurture his vision. "I try to come to the NTEC main offices several times a year, but I'm able to accomplish quite a lot where I'm at." As co-director of WRAP for NTEC, McLeod has taken it upon himself to forge alliances and partnerships for the benefit of NTEC member-tribes, and tribes in general in the area of air quality and other critical environmental issues.

Given his track record, McLeod should have no problem accomplishing his vision of giving back to tribes and knowing he's truly done something beneficial. McLeod will unveil a new plan to address nine important issues for tribes in February to NTEC's board to be addressed by WRAP. Insights will continue to monitor the WRAP program and provide timely updates.

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