



Executive Summary

Tribal Review

of the 2020 Congressional Action Plan on the Climate Crisis

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EXECUTIVE SUMMARY

This document (hereafter, Tribal Review) provides a Tribal perspective on [Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America](#).¹ The Congressional Action Plan (CAP), released in June, 2020, was developed by the [House Select Committee on the Climate Crisis](#). The CAP aims to fulfill a set of integrated goals: reach net-zero emissions by 2050; reduce pollution in environmental justice communities; and reach net-negative emissions in the second half of the 20th century. Twelve pillars of climate action promote these overarching goals. The purpose of the Tribal Review is to provide Tribal Nations, inter-tribal organizations, and other interested parties with a framework of the CAP that will: (i) provide **information** to Tribal leaders regarding impacts and opportunities, gaps, concerns, and Tribal priorities identified in a critical review of the CAP; (ii) assist Tribal leaders in **strategizing** to address the priorities and gaps of the CAP; (iii) provide draft **language** that Tribal leaders may deploy in communications with Congresspeople and others to advance fulfillment of objectives, including Tribal resolutions. This report uses the term “Indigenous Peoples” broadly to encompass Tribal Nations and Indigenous communities (Appendix 1).

Authors of the Tribal Review identified six overarching themes that relate to the fulfillment of the CAP goals: (1) increase social-economic resilience to the impacts of an economic transition toward a carbon-neutral economy; (2) uphold the Federal Trust Responsibility, Treaties, and commitment to formal Government-to-Government relations and Tribal Consultation, as well as all rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples (U.N. Declaration); (3) restore ecological resilience, thereby strengthening the federal government’s capacity to ensure Tribal access to cultural resources (e.g., First Foods) on Tribal lands, and ceded and ancestral territories; (4) assign value to Indigenous and Traditional Knowledges (ITK) in climate change science, planning, and action, while respecting the requirement for the Free, Prior and Informed Consent of Indigenous Peoples; (5) promote environmental and climate justice while upholding Tribal sovereignty; and (6) uphold and expand institutions relevant to climate governance and science. These themes span the CAP’s twelve Pillars of climate action across a range of governance and management scales, including local, regional, national, and international.

(1) Increase social-economic resilience to the impacts of an economic transition toward a carbon-neutral economy.

An increase in high-paying jobs, including viable career pathways for youth, is critically needed in virtually all Tribal Nations and Indigenous communities. Many Tribal Nations and Indigenous communities will be affected by an energy transition. This theme pertains to three needs: (i) tools to facilitate negotiation of the economic transitions that are underway in many Indigenous

¹ House Select Committee on the Climate Crisis, 2020. Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America. 116th Congress; Washington D.C., pp. 538.

communities to promote net-zero emissions (e.g., transition from fossil fuel-based economy to a renewable energy economy); (ii) a reduction of barriers to access technical and financial resources that are designed to enable farmers and ranchers to participate as partners in solving the climate stewardship crisis; and (iii) enablement of communities to cope with climate change impacts (e.g., on agricultural enterprises).

The CAP proposes several actions that would enable economic transition; however, to be effective, these innovations need to be tailored to the conditions that many Indigenous communities confront. Pillar 5 recommends establishing a National Economic Transition Office that would specifically engage Tribal Nations. Pillar 2 proposes changes in federal funding policies and structure to accelerate clean, decarbonizing technologies through the four stages of technological innovation (research, development, demonstration, and deployment). However, when Tribal Nations have garnered resources it is often through a one-time grant. Short-term capital injection, while prospectively beneficial, lacks long-term support. Long-term resource allocation, particularly for deployment, is comparatively more effective in assisting communities to make their green energy transition.

The design of agricultural programs and the delivery of technical and financial resources also need to be improved to be effective. The current model of supporting Tribal agriculture through grant funding is piecemeal, and thus insufficient for the 574 Federally-Recognized Tribal Nations. Technical staff often have insufficient familiarity with the culture, history, and socio-economic systems of Indigenous Peoples to address actual needs.

Finally, the U.S. Census data resources to assess the economic status, trends, and needs of Indigenous Peoples are ill-suited to fulfilling their purpose. Pillar 5 does not refer to economic data such as statistics on employment, income, and poverty, which are essential for understanding current and future economic conditions. American Community Survey sample sizes in small geographic areas do not produce statistically meaningful data on such critical indicators as unemployment, income, and poverty.² Nonetheless, the Bureau of Indian Affairs Labor Force Report has relied on this data. Tribal Nation governments and Indigenous communities generally do not have the resources to conduct their own population and economic surveys.

Priorities also include:

- Ensure that apprenticeships, internships, training, and childhood education for the low-carbon economy are available in Indigenous communities, including those in remote areas, with assistance from Tribal colleges and universities.
- In addition to addressing the needs of coal miners and their communities, resolve legacy issues such as compensation to uranium workers and their families, and be

² DeWeaver, N. 2013. American Community Survey data: On the American Indian / Alaska Native population: A look behind the numbers, National Congress of American Indians.

forward-thinking to address the needs of Tribal Nations and Indigenous communities as they transition away from oil and gas development.

- Expand the definition of the clean economy to other low-carbon sectors such as health care, caregiving, domestic work, education, low-impact services, and the arts.

(2) Uphold The Federal Trust Responsibility, Treaties, and the commitments to formal Government-to-Government relations and Tribal Consultation; as well as all rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples (U.N. Declaration).

The Federal Trust Responsibility is “a legally enforceable fiduciary obligation on the part of the United States to protect Tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native Tribal Nations and Villages”³ as well as to non-federally recognized Indigenous Peoples. Climate change poses a direct threat to the lands, waters, assets, resources, and entire ecosystems of American Indian and Alaska Native Tribes and villages, and to non-federally recognized Indigenous Peoples. Climate change affects the resources of Indigenous Peoples in many ways: (i) the abundance and persistence of Tribal First Foods, due to alterations to species ranges – an effect of change in the life history events (phenologies) of species, often compounded by environmental alterations that were introduced during the 19th and 20th century (habitat loss, dam construction, pollution, invasive species introduction); (ii) the availability of water resources – a particular concern for communities that inhabit arid environments; (iii) increased exposure to wildfire risk; and (iv) other effects.

Providing a resilient water system with capacity that allows a Tribe to fulfill its citizens’ water needs during extended periods of drought or wildfire seasons is critical. In addition, water infrastructure needs to be sufficient to enable Tribal Nations to irrigate agricultural crops, especially during prolonged drought periods. Tribal Nations had unlimited access to water before colonization and should have senior water rights that supersede those of any other entity for consumption or to support culturally important species. This is a Trust Responsibility as established by a recent case in the United States Court of Appeals for the Federal Circuit [immemorial priority date for Klamath Tribes’ water rights].⁴ Resilience planning can help Indigenous Peoples anticipate and prepare for future change, and thus falls under the Trust Responsibility of the federal government for federally-recognized Tribes.

Non-federally recognized Indigenous Peoples also need expanded legal protection and financial support. The current absence of legal protection for their rights to cultural and traditional resources can decrease community resilience over time. The federal government also needs to account for social, cultural, and environmental concerns. This responsibility includes recognizing

³ BIA (2020). Frequently Asked Questions | Indian Affairs [online]. Available at: <https://www.bia.gov/frequently-asked-questions> [accessed Sept. 24, 2020].

⁴ Baley v. United States, 942 F. 3d 1312 (Fed. Cir. 2019), cert. den. 2020 WL 3405869 (June 22, 2020).

the right to self-determination in federal programming and policy development, in addition to providing and expanding support for federally-recognized Tribes.

(3) Restore ecological resilience, thereby strengthening the federal government’s capacity to ensure Tribal access to culturally-valued resources (e.g., First Foods) on Tribal lands, and ceded and ancestral territories.

Ecological resilience refers to the amount of disturbance that an ecosystem can withstand without changing fundamental processes (e.g., ecological productivity) and structures.⁵ Pillar 10 of the CAP asserts the importance of actions that promote ecological resilience. For Indigenous Peoples, resilient ecosystems are particularly important in that they harbor First Foods. It is essential that these resources be maintained in that many of these resources are protected by treaty rights and / or the Trust Responsibility for which the federal government bears responsibility to maintain.⁶ Moreover, First Foods—and the harvesting, gathering, preparation, and ceremonial practices therein —, are a cornerstone of livelihoods, culture, language, health, and community well-being.

On public lands where First Foods occur, it is not sufficient for land management agencies to focus on resource restoration alone, however. Agencies must engage Tribes in a co-management model of decision-making. Effective co-management will require a concerted effort by agencies to overcome ingrained social-ecological traps that currently constrain shared decision-making.⁷

A concern raised by the CAP is the incentivization for hydropower, with the caveat that hydropower projects should “*comply with all relevant environmental statutes, including the Endangered Species Act, and should operate in a way that does not harm fisheries or threaten recreational, Tribal, and commercial fishing*” (p. 44). Hydropower dams pose significant barriers to the survival and abundance of salmon species, despite providing carbon neutral energy. Other concerns: the CAP supports research and development of “next generation” nuclear technologies, and it does not ban new fossil fuel infrastructure. These paths are destructive to the lands, waters, and oceans, both from catastrophic failures and from long-term cumulative pollution. Finally, the funding level of Tribal climate change programs such as the BIA Tribal Resilience Program is inadequate to fully meet the need, despite increases of the past few years. Project-based funding alone, while important to Tribal Nations in responding to the effects of climate change, is not a sustainable approach to building capacity.

⁵ Holling, C.S., 1973. Resilience and stability of ecological systems. *Annual review of ecology and systematics*, 4(1), pp.1-23.

⁶ Goschke, L., 2016. Tribes, treaties, and the trust responsibility: a call for co-management of huckleberries in the Northwest. *Colo. Nat. Resour. Energy Evtl. L. Rev.* 27 (2), 315–360.

⁷ Long, J.W. and Lake, F.K., 2018. Escaping social-ecological traps through tribal stewardship on national forest lands in the Pacific Northwest, United States of America. *Ecology and Society*, 23(2).

(4) Assign value to Indigenous and Traditional Knowledges in climate change science, planning, and action, while respecting the requirement for the Free, Prior and Informed Consent of Indigenous Peoples.

The CAP proposal to “*restore and protect America’s lands, waters, ocean, and wildlife*” (Pillar 10) raises the role of Indigenous and Traditional Knowledges (ITK, Convention on Biological Diversity, Traditional Knowledge Innovations and Practices).^{8,9} Indigenous Peoples have accrued, stewarded, and deployed ITK to manage terrestrial and aquatic systems since time immemorial.^{10,11} ITK will likely play a key role in adaptation planning for Indigenous communities. For instance, there is an opportunity to incorporate Indigenous understanding of watershed processes, whereby entire stream networks are considered, and sustainable forestry practices. Land managers of many agencies currently seek ITK to expand understanding of practices to restore ecological resilience to wildfire and other disturbances.^{12,13} However, it is critical that agencies uphold the requirement for Free, Prior, and Informed Consent. ITK may include sensitive information about cultural sites, including traditional hunting, fishing, and gathering sites, burial grounds, or spiritual locations. It may also include knowledge of economically valuable pharmaceutical compounds found within traditional medicines or other intellectual property rights that could confer financial benefits. It is essential that federal programs do not require disclosure of sensitive Indigenous knowledge as part of grant or program requirements and that Indigenous People maintain intellectual property rights over traditional resources (Pillar 11).¹⁴

(5) Promote environmental and climate justice while upholding Tribal sovereignty.

An “environmental justice community” is “*a community with significant representation of communities of color, low-income communities, or Tribal Nation/Indigenous communities, that experiences, or is at risk of experiencing higher or more adverse human health or environmental effects*” (Pillar 6). This policy theme pertains to correcting structural inequities, manifested in disparities in (i) economic conditions; and (ii) public health - both mental health and physical

⁸ Rýser, R.C., 2012. Indigenous and traditional knowledge. *Berkshire Encyclopedia of Sustainability*, 5.

⁹ Nalau, J., Becken, S., Schliephack, J., Parsons, M., Brown, C. and Mackey, B., 2018. The role of indigenous and traditional knowledge in ecosystem-based adaptation: A review of the literature and case studies from the Pacific Islands. *Weather, Climate, and Society*, 10(4), pp.851-865.

¹⁰ Berkes, F.; Folke, C.; Gadgil, M. 1995. Traditional ecological knowledge, biodiversity, resilience and sustainability. In: Perrings, C.A.; Mäler, K.G.; Folke, C.; Holling, C.S.; Jansson B.-O., eds. *Biodiversity conservation*. Dordrecht, Netherlands: Springer Science+Business Media: 281–299.

¹¹ Parrotta, J.A.; Trostler, R.L., eds. 2012. *Traditional forest-related knowledge: Sustaining communities, ecosystems and biocultural diversity*. Dordrecht, Netherlands: Springer Science+Business Media. 648 p.

¹² Steen-Adams, M.M.; Charnley, S.; McLain, R.J.; Adams, M.D.; Wendel, K.L. (2019). Traditional knowledge of fire use by the Confederated Tribes of Warm Springs in the eastside Cascades of Oregon. *Forest Ecology and Management*. 450:117405.

¹³ Lake, F.K., Wright, V., Morgan, P., McFadden, M., McWethy, D. and Stevens-Rumann, C., 2017. Returning fire to the land: celebrating traditional knowledge and fire. *Journal of Forestry*, 115(5), pp.343-353.

¹⁴ Climate and Traditional Knowledges Workgroup (CTKW). (2014). *Guidelines for Considering Traditional Knowledges in Climate Change Initiatives*. <https://climatetkw.wordpress.com>.

health (Pillar 7). Climate change poses additional mental health challenges to people and cultures with historical connections to place and environment. In addition, this theme is relevant to the need for relocation (Pillar 9) that many communities, particularly in Alaska, as well as the coastal and Great Lakes regions, are confronting. The social science literature documents that adaptation and resilience responses are most effective when community-led and tailored to community needs and priorities.^{15,16} Tribes currently confront a significant unmet need for infrastructure related to relocation or protect-in-place.^{17,18} This is particularly true for the implementation phase (as compared with the planning phase). The decision-making outcome regarding the response to the effects of severe erosion, coastal inundation, or hydrological alterations due to wildfire must lie with that of the community. However, a deficiency in the CAP is its silence, or scant development, regarding some key areas of environmental justice for Tribal Nations and Indigenous Peoples facing the climate crisis. Tribal consultation, for example, is about procedural justice (a cornerstone of environmental justice), and is an exercise of the government-to-government relationship between federally-recognized Tribal Nations and the United States. In instances of large landscape disturbances, such as wildfire and severe flooding (Pillar 10), that span Tribal and federal and/ or state lands, co-management is one prospective model.

(6) Uphold and expand institutions relevant to climate governance and science.

Climate action Pillars 11 and 12 affirm the importance of institutions –both in the realms of climate governance and science—in achieving net-zero emissions and related CAP goals. The CAP recognizes that effective action to manage climate change requires such institutions to be in effect at national and international scales, given the global nature of climate change processes. Institutions regarding international leadership (Pillar 11) impact Indigenous Peoples in many ways, and in many countries. In this country and others, for instance, black carbon degrades Arctic snow and ice, causing destruction to Indigenous lifeways. Thus, upholding agreements that address black carbon and improving Arctic diplomacy and engagement is essential to the well-being of Arctic region Indigenous Peoples. Likewise, national security institutions are also impactful. Tribes near military installations can be adversely affected by actions taken there if they do not have the opportunity to coordinate hazard planning with adequate funding and technical assistance. Food security has proven to be an important national security issue, especially during the Covid- 19 pandemic.

¹⁵ Lowlander Center, 2015. Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles. Prospectus for the National Disaster Resilience Competition.

¹⁶ Marino, E., 2012. The long history of environmental migration: Assessing vulnerability construction and obstacles to successful relocation in Shishmaref, Alaska. *Global environmental change*, 22(2), pp.374-381. https://www.doa.la.gov/OCDDRU/NDRC/IDJC_Prospectus_final_27Oct15_updated_logos.pdf

¹⁷ GAO, 2009. Alaska native villages: limited progress has been made on relocating villages threatened by flooding and erosion. Government Accountability Office Report (GAO-09-551)

¹⁸ ATNI, 2020. (Internal report - contribution to the document:) American Indian Communities in the Contiguous United States: Unmet infrastructure needs and the recommended pathway to address a fundamental threat to lives, livelihoods, and cultures.

From a Tribal perspective, the proposals regarding institutions have critical deficiencies, despite making a step in the right direction. The framework is too narrow regarding necessary ingredients for the U.S. to restore its international leadership position. U.S. delegations to international climate change negotiations and other related delegations must include Tribal representatives. Also, Tribes should participate fully in cross-border negotiations affecting Tribes in the U.S. (e.g. the Columbia River Treaty negotiations). Pillar 11 is overly focused on military matters, and ignores national defense issues important to Tribes such as food security (including traditional food sources from marine and freshwater to land-based animals and plants), energy security, Tribal sovereignty, and the treatment of Indigenous people attempting to migrate to the U.S. at its southern border. Priorities include:

- Ensure that all climate actions in the U.S. and internationally comply with the rights of Indigenous Peoples that are recognized in the 2007 UN Declaration, including the right to self-determination, to lands, territories and resources, and free, prior, and informed consent.
- Rejoin the Paris Accord - without doing so, the U.S. cannot regain its international leadership role.

Overall, climate governance and science institutions must include and prioritize the findings in the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change, which were developed by an expert task force in September, 2015, and endorsed by the National Congress of American Indians (NCAI) through Resolution #SD-15-024. Too often, climate science is viewed as consisting only of western science. Traditional Knowledge must be recognized as an essential element of climate science, and should inform climate policy, always with the free, prior, and informed consent of the Indigenous Peoples involved. Also, non-Indigenous personnel must have access to training to enhance recognition of appropriate ways of working with Indigenous Peoples, their knowledge systems, and their worldviews.

Actions

The Tribal priorities of the twelve CAP Pillars point to four actions:

1. Position Tribes for economic leadership in policies fostering the transition to carbon neutrality.
2. Solidify Tribe's sovereign status as a cornerstone of programs, policies, and institutions focused on climate governance, science, and justice.
3. Ensure protections for Indigenous cultures that face climate risks.
4. Adopt the U.N. Declaration on the Rights of Indigenous Peoples as U.S. policy.