NAC
Environment and Trade Working Together

U.S. National Advisory Committee
Independent Federal Advisors on the
North American Agreement on Environmental Cooperation

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May 12, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its forty-fourth meeting on April 16-17, 2015 at the EPA Headquarters in Washington, DC. NAC members wish to express our appreciation for your commitment to this annual face-to-face meeting dedicated to advancing the mission of the CEC and the opportunity to provide our advice on important tri-national environmental issues.

The NAC extends our appreciation to the EPA team for their organization and support of our work. Director Denise Sirmons, Office of Diversity, Advisory Committee Management and Outreach (ODACMO) welcomed our members and provided an orientation to the charge questions. Karl Brooks, Deputy Assistant Administrator, Office of Administration and Resources Management reiterated the importance of the NAC and GAC work on behalf of the EPA Administrator. Neilima Senjalia, Acting Director, Office of Regional and Bilateral Affairs, OITA, informed the NAC and GAC regarding the upcoming Council Session, CEC Strategic Plan, Operational Plan and Traditional Ecological Knowledge (TEK.) We also thank Sylvia Correa, Senior Advisor for North American Affairs in OITA for providing an orientation on the CEC process and setting a context for our work.

The NAC greatly appreciates the work of Associate Director Mark Joyce, NAC/GAC Designated Federal Officer Oscar Carrillo, Stephanie McCoy, and the entire ODACMO team for their outstanding support.

We appreciated the update by CEC Executive Director Irasema Coronado on progress made on the CEC 2015-16 Operational Plan and NAPECA grants, and their relationship to the CEC Strategic Plan, as well as the proposed performance framework.

We also thank JPAC Chair Bob Varney for his comments on the 2014 Council meeting in Yellowknife, especially the town meeting on TEK issues, and the upcoming JPAC session in Boston that will focus impacts of climate change and extreme weather events on North America. The NAC was particularly interested in the town hall session on extreme weather events and is willing to suggest participants from its extensive knowledge of local non-

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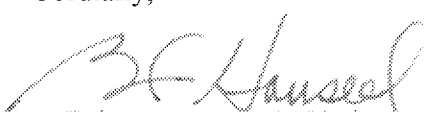
governmental leaders from many U.S. regions. We respectfully suggest that this session focus on the best management practices based on lessons learned in the aftermath of catastrophic weather events which may lead to adaptive responses and more resilient communities, especially among poor and vulnerable populations.

The NAC wishes to express their thanks to Karin Koslow, Deputy Director, American Indian Environmental Office, OITA for her presentation on 30th anniversary of the EPA's indigenous policy and improvements in the agency's work with the 566 federally recognized tribes across the country. We commend President Obama's White House Council on Native American Affairs. We also thank you for your work as a Council member in incorporating TEK into the CEC framework and creation of the 15 member expert committee.

Karin's remarks provided a good preface for the afternoon presentation on TEK to the NAC and GAC by our own members Octaviana Trujillo, Gail Small, Cecilia Martinez and Gerald Wagner. Their orientation on TEK to our members and the pursuant discussion was both educational and inspirational. We express our sincere thanks to them for sharing their beliefs and knowledge with us, especially on the importance of water as vital to all life and sustainable communities.

Thank you for your consideration of the attached responses by the NAC to the Charge Questions regarding the CEC Operational Plan, NAPECA Grants, and the Communications. We hope our advice is useful to you in your capacity as a Party to the North American Agreement on Environmental Cooperation and look forward to your response.

Cordially,



Brian L. Houseal, Chair
U.S. National Advisory Committee

cc:
Jane Nishida, Deputy Assistant Administrator, Office of International and Tribal Affairs
Denise Sirmons, Director, Office of Diversity, Advisory Committee Management & Outreach
Oscar Carrillo, Designated Federal Officer
Sylvia Correa, Senior Advisor for North American Affairs, OITA
Bob Varney, Chair, Joint Public Advisory Committee
Irasema Coronado, Executive Director, CEC
Members of the U.S. National and Governmental Advisory Committees

National Advisory Committee (NAC)
to the U.S. Representative to the
Commission for Environmental Cooperation (CEC)

Prior to commenting on Charge Questions, the NAC would like to acknowledge challenges imposed by the overall CEC budget and respectfully request that the Parties to the North American Agreement on Environmental Cooperation (NAAEC) fulfill their commitments to provide a minimum of $3.0 million per year, per country, to fund the operations of the CEC. The NAC notes that, if the original $3.0 million designated over 20 years ago as a Party's contribution were adjusted for inflation, the total budget would be significantly higher today. This situation is lamentable and limits the CEC's ability to achieve its mission at a time when the need for tri-national environmental cooperation and action has never been greater.

Advice 2015-1 (May, 2015):
Charge Question #1: CEC Draft Operational Plan 2015-16

The NAC appreciates the opportunity to review the CEC Draft Operational Plan for 2015-16, and the EPA's efforts to reduce the initial amount of proposed projects to a more manageable number which reflect the three priority areas for the CEC 2015-2020 Strategic Plan:

- Climate Change – Mitigation and Adaptation, Short-lived Climate Pollutants, Blue Carbon;
- Green Growth – Transportation, Clean Energy, Sustainable Production and Consumption;
- Sustainable Communities and Ecosystems – Priority Species and Ecosystems, Landscapes and Seascapes, Sustainable Communities and Urban Initiatives.

We also commend the CEC's efforts to select projects related to the three important cross cutting themes of the Strategic Plan:

- Learning from and *assisting vulnerable groups and indigenous communities*
- Enhancing the *alignment of environmental regulatory standards*, *enforcement*, and *compliance*
- Enhancing information, *transparency, capacity building and communication.*

Insofar as the Council has not yet approved the CEC 2015-2020 Strategic Plan, the NAC recognizes the challenge of identifying projects within the CEC Draft Operational Plan which support the above-mentioned priorities and themes, and hopes that successive operational plans will closely align with them and be evaluated through improved Performance Measures, and adjusted accordingly.

Among the proposed projects, the NAC recommends additional consideration and refinement of two projects: #12.'Engaging Farmers and Other Landowners to Support Monarch Butterfly and Pollinator Conservation', and #13. Monarch Butterfly Flyway: Communication, Participatory Conservation, and Education Programs throughout the Migratory Route.' A recent assessment undertaken by NatureServe and the Xerces Society for Invertebrate Conservation has found that monarch butterflies in North America are vulnerable to extinction. One of the critical factors in the monarchs' decline is the widespread use of the herbicide glyphosate to eliminate milkweed, a plant critical to the butterflies' life cycle. It also appears quite likely that the USDA and the herbicide manufacturer, among others, will engage in costly and time-consuming litigation

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regarding glyphosate. The NAC believes that these two CEC projects can be better designed to address the highest priority threats contributing to the demise of the monarch as well as to identify best practices to restore this iconic species and communicate with farmers and others about their role in its management.

The NAC commends the inclusion of a proposed Article 13 report on hydro-fracking and urges the Secretariat to initiate this independent research as soon as possible. The NAC is aware of the public's concern about the impacts of hydro-fracking on water resources, particularly in arid regions of our country, as well as soil and water contamination from waste fluids, increase in greenhouse gas emissions, natural habitat destruction, safety of transport systems, etc. This study has the potential to increase public knowledge about the scope and impacts of hydro-fracking and to identify best practices to protect the environment.

The NAC respectfully recommends two additional Article 13 reports. One is to examine the potential environmental benefits of renewable energy sources and distributed generation throughout North America in terms of carbon reduction, air quality benefits, water conservation, and land and ecosystem preservation. Renewable energy sources are cost competitive with conventional power generation in many parts of the country and the technology is rapidly improving, particularly for solar energy. Combined solar and energy storage technologies will soon make it possible to have a home with all the amenities we have come to rely on: HVAC, refrigeration, washer/dryer, dishwasher, etc., even charging capabilities for electric vehicles, and be entirely independent of the grid. This will also make it possible to bring reliable, clean power to remote communities in North America that have limited access to power. With the wide scale adoption of renewables and distributed generation, there would be much less need for power generation from conventional sources, and associated mining, energy extraction, high voltage power line erection, etc. This issue aligns well with the Council priorities of Climate Change, Green Growth, and Sustainable Communities and Ecosystems, and also with EPA's Strategic Goals.

The second Article 13 report the NAC proposes would address Traditional Ecological Knowledge. The NAC commends the announcement at the 2014 annual CEC Council Session in Canada by the Environmental Ministers that they will focus on TEK. The NAC shares the Council's recognition of the importance of preserving and incorporating traditional ecological knowledge and practices of communities that contribute to addressing the effects of climate change, conservation and sustainable use of natural resources and biological diversity. Several NAC members support the inclusion of TEK in the upcoming December 2015 Climate Change negotiations in Paris, recognizing that climate change will require a paradigm shift in how human societies interact with the Earth's resources, especially water, which sustains all life. With the Council's recent decision to create an expert tri-national roster to incorporate TEK into the CEC's mission and processes, the NAC recommends that funds be made immediately available to those experts to initiate their work through the independence of an Article 13 report. Appendix #1 provides a framework of potential topics.

Finally, the NAC has raised the issue of North American water resources as a trade commodity in previous Advise Letters. While we understand that there are many bilateral watershed compacts and that the Department of Interior has federal authority over water rights, we believe

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that climate change will have a profound impact on water availability, quality and cost in coming years. The NAC respectfully requests that the CEC consider a North American assessment of water as a trade resource. Much the same as assessments of a product's so-called 'carbon footprint' there could be a similar assessment of a product's 'water footprint'.

Recommendations:

(1) Redesign Projects #12 & #13 to address the highest priority threats to the monarch butterfly, especially the loss of milkweed habitat due to the use of the herbicide glyphosate.

(2) Urges CEC Secretariat to initiate Article 13 report on hydro-fracking.

(3) Produce an Article 13 report on the potential environmental benefits of renewable energy sources and distributed generation throughout North America.

(4) Produce an Article 13 report on Traditional Ecological Knowledge as an initial product of the newly formed TEK expert group.

(5) Consider a North American assessment of water as a trade resource and incorporate the concept of a product's 'water footprint' as an important component in the face of accelerating climate change.

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Advice 2015-1 (May, 2015):
Charge Question #2: NAPECA Grants

Regarding the NAPECA grants, a NAC member noted, "There are too many grant applications for too little money." In addition, it appears that CEC spends too much staff time evaluating and deciding on the grant awards, and subsequent project administration. The NAC respectfully recommends that the NAPECA grants be more focused by setting eligibility requirements that reflect the Strategic Plan's cross-cutting themes which may include, but not necessarily be limited to: capacity building, focus on small and vulnerable communities, and transference of lessons learned to other groups. In addition, the CEC might consider a priority thematic area for two to three years of NAPECA grants. For example, the next NAPECA grants cycle could focus on TEK to support native communities' efforts in this area. Or, a grant cycle could set a priority on vulnerable communities' water resources and their adaptation strategies. By refining the criteria and better communicating the objectives and available funds, the number of applications might be reduced.

Recommendations:

(1) The NAC respectfully recommends that the CEC set NAPECA priorities which reflect the cross-cutting themes of the 2015-2020 Strategic Plan, and select a focal area for a two to three year grant cycle, such as TEK or water resources in vulnerable communities.

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Advice 2015-1 (May, 2015):
Charge Question #3: Communication

The NAC notes the difficulties with public communications that the CEC has faced since its inception over twenty years ago. It is not well-known by the general public, or by other state and federal environmental agencies, non-profit organizations, private sector companies and other North American groups which might support its mission and benefit from its work. In particular, the lack of Submissions on Environmental Matters (SEM) is discouraging as submitters raise concerns about transparency and whether the review process is worth their time and resources if their cases are to be dismissed by any one of the Parties.

While the NAC understands the CEC's desire to communicate and serve the 500 million residents of North America, we don't believe it is remotely possible given its limited budgetary resources. However, we do recommend that the CEC identify who are its target audiences, or 'customers', who should be aware of, and involved in, its work. At one level are state and provincial environmental and natural resource agencies, tri-national corporations and NGOs (e.g., Environmental Council of the States, Canada Environmental Network, etc.) These number in the hundreds and are easily identified. At another level are small and vulnerable communities, which are more difficult to identify and serve. However, with rapidly growing social media and more traditional means such as radio, this too may be improved. Specifically regarding the SEM process, law schools and policy NGOs (e.g., Environmental Law Institute, Mexico's Center for Environmental Rights, etc.) in the three countries are potential partners which may also serve to support and extend the policy mandates of the both the SEM and NAAEC.

Recommendations:

(1) The NAC respectfully recommends that the CEC identify selected target audiences who should be aware of, and involved in, the CEC's mission and who may benefit from its activities. Different communications techniques such as social media or radio may be needed to reach small, remote and vulnerable communities.

(2) The NAC further recommends that the CEC communicate with law schools and policy NGOs specifically about the SEM process and encourage their engagement.

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Appendix 1:
Considerations on the Role of Traditional Ecological Knowledge and Climate Change.

Following is a list of considerations for incorporating TEK into climate change policy, assessments, and adaptation efforts at national, regional, and local levels.

From: Vinyeta, Kirsten; Lynn, Kathy. 2012. Exploring the role of traditional ecological knowledge in climate change initiatives. Gen. Tech. Rep. PNW-GTR-XXX. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

National Policy Considerations:

- Establish formal recognition of the value of TEK in a climate context and inclusion of TEK within the National Climate Assessment.
    - Clarification of TEK as an accepted form of literature in the National Climate Assessment.
    - Protection of disclosed TEK.
- Examine the role of TEK in the Intergovernmental Panel on Climate Change assessments.
- Establish support for TEK (including funding) within Climate Science Center initiatives and processes where Landscape Conservation Cooperatives are establishing science priorities.
- Formal Recognition of TEK by Federal Agencies and Public Officials
    - Educate agency managers, scientists, and public officials on the nature of TEK and its role in climate change research and planning through publications, training sessions, and roundtables or meetings with indigenous groups.
    - Modify institutional standards for accepted formats of information to allow non-peer reviewed literature and information to be considered acceptable. If need be, this can be an exception applied only in regards to TEK.
    - Protection of TEK.
    - Ensure that all agency representatives understand the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007, as well as the international law of Free Prior and Informed Consent, and use these international regulations to guide the process of protecting the sensitive information that forms part of TEK.
- Consider the pursuit of a codification approach to institutionalizing TEK by creating an ethical construct that functions as an indirect representation of more sensitive knowledge concepts, in the interest of respecting and protecting core knowledge.

Future Research:

- Carry out or promote research that informs inclusion of TEK in climate initiatives.
- Examine additional areas where TEK is relevant in climate change discussions, such as the effects of climate change on plant and animal phenology, and the implications of these effects on the foundations of TEK.

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Funding and Compensation:

- Identify the need for TEK early in the process and include it in formal planning documents so as to ensure that adequate funding is secured for the TEK portion of the climate change initiative.
- Modify rules to allow for compensation of small-scale practitioners, such as may be the case for TEK holders.

Incorporating TEK in Climate Change Assessments and Adaptation Plans:

- Establish the role of TEK in climate change efforts
- Identify the scope of climate initiatives, including the boundaries of the assessment and tribal resources and interests that may be affected (on and off-reservation.)
- Determine how TEK will inform and guide objectives of climate initiatives.
- Establish formal recognition among all partners of the value and use of TEK in the climate assessments and plans.

Foster strong collaboration with tribal and nontribal partners:

- Identify indigenous and non-indigenous collaborators that should be involved in the initiative.
- Identify potential TEK holders that can contribute knowledge or establish a process by which TEK will be acquired.
- Communicate results, findings, and plans to all partners, including TEK holders.
- Consider developing a standard knowledge exchange template or set of guidelines that can be used in future endeavors.
- Support bio-cultural diversity so that the intimate relationships between different cultures and ecosystems are not lost with language and culture loss.

Protection of TEK:

- Create a review board for the purpose of screening and approving the received TEK and its sources.
- Establish a strategy that ensures that protection of TEK when it is used to inform climate change assessments and adaptation plans.
- Ensure that collaborators understand the United Nations of the Rights of Indigenous Peoples adopted by the General Assembly in 2007, as well as the international law of Free Prior and Informed Consent, and use these international regulations to guide knowledge exchange.

TEK and Government-to-Government Relationships:

- Indigenous entities and public agencies should exercise the government-to-government relationship by forming partnerships and collaborations around federal climate change initiatives.
- Public agencies should strive to engage tribes in climate change initiatives and ensure that TEK has a role in informing such initiatives.

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- When government action has implications on indigenous entities, public agencies should initiate a formal consultation toward a process of empowering involved indigenous entities. During this consultation, the following topics may be addressed:
    - What the knowledge exchange is intended to accomplish?
    - How TEK will be used in the given climate change initiative?
    - How culturally sensitive information will be shared and protected?
    - How funding or compensation will be addressed?
    - What the long-term role of the indigenous groups and TEK holders will be in the initiative?

A list of resources for tribal climate change adaptation planning can be found at http://www4.nau.edu/tribalclimatechange/resources/adaptation.asp#tools

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