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August 26, 2019

Mary B. Neumayr
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0002

Dear Honorable Chairman Mary B. Neumayr:

The National Tribal Air Association (NTAA) is pleased to submit these comments on White House Council on Environmental Quality's (CEQ) "Draft National Environmental Policy Act (NEPA) Guidance on Consideration of Greenhouse Gas (GHG) Emissions" (Draft Guidance).

The NTAA is a member-based organization with 148 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

The NTAA has several concerns regarding the new Draft Guidance.¹ The NTAA supported CEQ's 2016 "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Protection Act (NEPA) Reviews" (2016 Guidance).² The NTAA considers the 2016 Guidance to be complete and effective in providing leadership to federal agencies on how to address climate change in their NEPA review process. The NTAA has a history of working on climate change issues and communicating the concerns of Tribes to the EPA. In 2009, the NTAA developed a report on the impacts of climate change in Indian Country after a request by then-Office of Air and Radiation Assistant Administrator, Gina McCarthy.³

The stated reason for withdrawal of the final guidance CEQ issued in 2016 was Executive Order 13783 of March 28, 2017, entitled, "Promoting Energy

¹ CEQ-2019-0002, <https://www.regulations.gov/document?D=CEQ-2019-0002-0001>.

² Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 81 Fed. Reg. 51866 (Aug. 5, 2016) <https://www.federalregister.gov/documents/2016/08/05/2016-18620/final-guidance-for-federal-departments-and-agencies-on-consideration-of-greenhouse-gas-emissions-and>82 Fed. Reg. 16576 (April 5, 2017).

³ See [Impacts of Climate Change on Tribes in the United States](#), NTAA submitted a report to EPA's Office of Air and Radiation on Dec. 11, 2009 and we refer the CEQ to this analysis.



Independence and Economic Growth.” NEPA is intended to look at all aspects of energy proposals, not just the promotion of energy projects. NEPA is intended to evaluate the impacts to our people and our resources. If CEQ believes climate change and GHGs do not impact us then they must first provide us the evidence. Let us be clear about the intent, and that intent is to deny and ignore climate change. All arguments aside, it boils down to that fact. CEQ must adhere to current CEQ requirements to evaluate all impacts and risks. It is the law, and we stand in opposition to this unlawful proposal. If you want NEPA⁴ changed, then go to Congress and state your case.

As you know, the courts are not siding with the elimination of GHG analysis. In *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017), the D.C. Circuit Court of Appeals ruled that FERC had failed to adequately analyze the downstream impacts of GHG emissions in approving a Southeast Market natural gas pipeline project. Though *Juliana v. United States*, 217 F. Supp. 3d 1224, 1246 (D. Or. 2016) is still moving through the court system, the fate of this case is yet to be determined, and it would not be prudent to limit GHG analyses in FERC until this case is decided. On June 4, 2019 in *Birckhead et al. v. FERC*, 925 F.3d 510 (D.C. Cir. 2019), for the second time in three years, the D.C. Circuit rejected the Commission’s limited approach to the GHG analysis and confirmed under NEPA the Federal Energy Regulatory Commission (FERC) must gather information and evaluate upstream and downstream GHG emissions expected from proposed pipeline projects on a project-by-project basis. The courts have made it clear that federal agencies should consider the effects of GHG emissions and climate change when reviewing federal projects under NEPA.

The adverse effects of climate change are keenly and uniquely felt by Tribes and Alaskan Native Villages. Like the rest of the nation, Tribes are seeing the effects of the climate crisis through increased storm surges, erosion, flooding, prolonged droughts, wildfires, and insect pest outbreaks in their forests. The Intergovernmental Panel on Climate Change’s (IPCC) Special Report on Global Warming of 1.5° Celsius finds that drastic transformational actions across all economic sectors and levels, including energy, food production, behavior, and technologies, are required to limit global warming by 2030.⁵

Tribal peoples are more deeply affected by climate change than most American citizens, as their cultures are rooted in the natural environment and closely integrated into the ecosystem. According to the U.S. Fourth National Climate Assessment (NCA4) report, climate change has already started to alter and damage the U.S. economy, environment, and human health. The Summary Findings of the NCA4 conclude: “Climate change increasingly threatens Indigenous communities’ livelihoods, economies, health, and cultural identities by disrupting interconnected social, physical, and ecological systems.”⁶ Tribal citizens hunt and fish, use native flora and fauna for medicinal and spiritual purposes, and associate their identities and histories closely with the land

⁴ 42 U.S.C. §§ 4321 et seq.

⁵ IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. <https://www.ipcc.ch/sr15/>

⁶ USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.



and water under their care. In addition, many Tribal communities are heavily dependent on fish, wildlife, and native plants for sustenance. Therefore, the climate crisis will cut more deeply into the Tribal lifeways and standard of living than other sectors of society. The extent and magnitude of these changes depend on the amount of GHG emissions released into the atmosphere today and in the future, and thus NTAA believes it is essential to maintain/reinstate the 2016 Guidance to provide federal agencies an effective reference in addressing GHG emissions in the NEPA review process.

While the new Draft Guidance acknowledges that GHG emissions have environmental impacts and that these direct and indirect emissions should be quantified, we are concerned that the Draft Guidance limits the scope of the required analysis by stating NEPA reviews “need not give greater consideration to potential effects from GHG emissions than to other potential effects.” The Draft Guidance omits a recommendation to federal agencies to consider the impacts of GHG emissions on the environment. Additionally, the Draft Guidance does not require agencies to disclose the monetized social costs of GHG impacts, however, without doing so, the agencies cannot conduct an adequate and fair assessment of the costs and benefits of a proposed major federal action. The Draft Guidance fails to provide adequate tools agencies can use in calculating both direct and indirect emissions from a project and does not require consideration of alternatives or potential mitigation measures to reduce GHG emissions. The 2016 Guidance provided GHG quantification tools including GHG accounting tools, USDA’s COMET-FARM Tool, and Climate Change Resource Center’s Carbon On Line Estimator (COLE). NTAA’s concerns on the Draft Guidance, along with the streamlining revisions to the U.S. Forest Service proposed NEPA regulations⁷ and the Department of Interior NEPA Reviews,⁸ will undermine the ability of multiple agencies to provide well-analyzed and informed decisions to protect communities and their environments by limiting the scope and timeline of environmental analysis on some of the most important environmental quality issues of our day.

For these reasons, we oppose the finalization of the Draft Guidance and urge the CEQ to uphold the 2016 Guidance. The NTAA appreciates this opportunity to comment. If you have any questions or require clarification from the NTAA, please do not hesitate to contact the NTAA’s Project Director Andy Bessler at 928-523-0526 or andy.bessler@nau.edu.

On Behalf of the NTAA Executive Committee,

Wilfred J. Nabahe
Chairman

National Tribal Air Association

Cc: Pat Childers, EPA Office of Air and Radiation

⁷ National Environmental Policy Act (NEPA) Compliance, 84 Fed. Reg. 27544 (proposed June 13, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-06-13/pdf/2019-12195.pdf>.

⁸ Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”, Order No. 3355 (Aug. 31, 2017), https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf.