



# USET

SOVEREIGNTY PROTECTION FUND

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April 26, 2018

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
EPA Docket Center (EPA/DC), Mail Code 28221T  
Attention Docket ID No. EPA-HQ-OAR-2017-0355  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Pruitt,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment on the Environmental Protection Agency's (EPA)'s Proposed Repeal of the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, otherwise known as the Clean Power Plan (CPP).

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas<sup>1</sup>. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

The CPP, issued in October 2015, sought to implement the first-ever national standards to reduce carbon pollution from power plants. The EPA projected that the CPP would prevent 3,600 premature deaths, 1,700 heart attacks, 90,000 asthma attacks, and 300,000 missed work days and school days. The expected value of the public health and climate benefits generated by the CPP were estimated at \$34 billion to \$54 billion compared to \$8.4 billion in compliance costs. Additionally, the CPP sought to provide a long-term strategy to address the increasing threat of climate change which can have a range of negative effects on human health and the environment. These negative effects are especially prevalent among Tribal Nations, who have a disproportionately increased risk of disease and death due to toxic particulate matter and other air pollutants caused by power plants. USET SPF recognizes the overwhelming scientific evidence of climate change, including the serious threats climate change can pose when it comes to the protection of traditional foods, sacred sites, clean air and water, and cultural practices for Tribal Nations.

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Despite the projected reduction in emissions intended to prevent the health and environmental hazards associated with harmful pollution and climate change, EPA is continuing to move forward with repealing the CPP. The Proposed Repeal followed a review directed by Executive Order (EO) 13778 establishing that national policy must facilitate the development of U.S. energy resources, including oil and gas, in favor of energy independence and reduce the regulatory burdens associated with the development of those resources. USET SPF is concerned about the long-lasting effects a repeal of the CPP would have on the health, wellness and environment of Tribal communities. We remind EPA of its federal trust responsibility and obligation and to engage in meaningful Tribal consultation when it comes to actions that will have a significant impact on the health and safety of our health, air, and environment. This would align with EPA Administrator Scott Pruitt's reaffirmation of the 1984 Indian Policy signed in October 2017, which acknowledges EPA's federal trust responsibility, recognizes Tribal self-determination, and recognizes the importance of the Agency's partnership with Tribal governments in fulfilling the EPA's core mission. Below, USET SPF provides our concerns on the Proposed Repeal of the CPP, including recommendations to EPA on how to fulfill the federal trust responsibility to protect the health and environment of Tribal communities.

### **Absence of Tribal Consultation**

USET SPF is deeply concerned about the absence of any Tribal consultation on behalf of the EPA to repeal the CPP despite the apparent impacts of climate change on human health, biological resources, treaty resources, and subsistence resources for Tribal communities. Under the Proposed Repeal, EPA has determined that the "[CPP] does not have tribal implications as specified in EO 13175" and has therefore determined not to engage in government-to-government consultation with Tribal Nations regarding the Proposed Repeal. USET SPF wholly disagrees with this assessment by the EPA, as Tribal communities, especially those who are dependent on traditional sustenance practices or live in coastal areas, are already experiencing the effects of climate change with the likelihood of increased effects over time. Further, the Regulatory Impact Analysis for the 2015 CPP recognized these unique conditions faced by Tribal Nations and provided reference for them, stating:

Native American tribal communities possess unique vulnerabilities to climate change, particularly those impacted by degradation of natural and cultural resources within established reservation boundaries and threats to traditional subsistence lifestyles. Tribal communities whose health, economic well-being, and cultural traditions that depend upon the natural environment will likely be affected by the degradation of ecosystem goods and services associated with climate change.

The Proposed Repeal would eliminate the important health and environmental benefits and protections provided under the CPP. According to the EPA's 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations, the EPA will "give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands." A unique government-to-government relationship exists between Tribal Nations and the federal government which is grounded in the Constitution, numerous treaties, statutes, federal case law, regulations, and EOs. Consultation is an essential element in the exercise of this government-to-government relationship.

Many Tribal Nations across the country participate in energy production or resource extraction on Tribal lands. Additionally, certain Tribal Nations operate or facilitate fossil fuel-fired Electric Generating Units (EGUs) on their lands, and are therefore subject to the emission standards under the CPP. To state that a repeal of the CPP does not have Tribal implications is misguided and ill-informed. USET SPF recommends

the EPA act quickly to overcome this oversight and engage in meaningful government-to-government consultation regarding the Proposed Repeal in accordance with its own Tribal consultation policy. The unique legal status of Tribal Nations and federal trust responsibility to Tribal Nations has long been recognized by EPA and reaffirmed by EPA Administrators since 1984, and we urge EPA to align its actions accordingly with respect to the proposed repeal of the Clean Power Plan, to work with Tribal nations on a government-to-government basis to protect public health, and the land, air, and water in Indian Country,

### **Effects of Climate Change on Tribal Nations**

The effects of pollution from fossil fuel-fired EGUs and climate change on Tribal Nations are varied across the country. According to the, “2017 Status of Tribal Air Report (STAR),” released by the National Tribal Air Association “climate change threatens Tribal lifestyles by decreasing food security, endangering culturally significant flora and fauna and forcing them towards extinction, increasing the risk of extreme weather events, and endangering the public health in general.” The STAR report also identified regional climate change impacts. The USET SPF region is large and diverse, and will likely continue to experience a wide range of effects due to climate change. For the Northeast (NE) region, there are projected increases in heavy precipitation and likely sea level rise may lead to more frequent, damaging floods. According to the STAR report, large portions of the NE region could see a longer growing season for a number of crops but may also become unsuitable for growing some fruit varieties and some crops, such as cranberries, apples, blueberries, grain, and soybeans. Similarly, by the end of the century, only a small portion of the NE Region may be suitable for maple syrup production, which Tribal Nations in Maine strongly utilize for economic development. In the Southeast and Gulf Coast regions, sea levels are projected to rise, along with increased hurricane intensity, as well as associated storm surges which may lead to further erosion, flooding, and property damage.

Tribal Nations are impacted by the environmental effects of climate change much differently than the rest of the nation, as our cultures are highly integrated into the ecosystems with many Tribal economies heavily dependent on subsistence resources, such as the use of fish, wildlife, and native plants. Even where Tribal economies are integrated into the national economy, Tribal cultural identities continue to be deeply rooted in the natural environment. As climate change alters these environments and disrupts Tribal cultures and subsistence lifestyles, the survival of some Tribal Nations as distinct cultures may be at risk. The loss of traditional cultural practices, due to climate-driven die-off or range shift of culturally significant plant and animal species, may prove to be too much for some Tribal cultures to withstand on top of other environmental challenges associated with climate change. Tribal Nations are discovering that the animals and plants which we depend for cultural practices and identity have either migrated beyond reservation boundaries or have disappeared altogether. Before finalizing the Proposed Repeal of the CPP, EPA must fulfill the federal trust responsibility and take the necessary steps to ensure Tribal resources and cultural practices are protected.

### **Conclusion**

Tribal Nations and the federal government have inherent responsibilities to ensure the protection of the environmental and cultural resources that support the health and wellness of Tribal communities. For the EPA, this includes taking the necessary steps to ensure Tribal environmental resources are sufficiently protected from harmful emissions generated by fossil fuel-fired EGUs. USET SPF strongly believes future generations will struggle to deal with the public health effects and environmental damage that will occur unabated if the EPA repeals CPP. The magnitude of the impacts to Tribal Nations due to the proposal to repeal CPP should have generated a full scale Tribal consultation. USET SPF urges EPA to cease

finalization of the Proposed Repeal of the CPP until there have been national, regional and local efforts by the EPA to engage in meaningful consultation with Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 202-624-3550.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal stroke extending to the right.

Kirk Francis  
President

A handwritten signature in black ink, appearing to read "K. A. Carroll", with a stylized, cursive script.

Kitcki A. Carroll  
Executive Director