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# A Better Buildings Challenge for Indian Country

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What are Indian tribal governments doing to help reduce greenhouse gas (GHG) emissions? I thought there might be some information to answer this question in the recently released *National Climate Assessment. Climate Change Impacts in the United States: The Third National Climate Assessment* (2014) (*Assessment*). The *Assessment*, available at [nca2014.globalchange.gov](http://nca2014.globalchange.gov), is an extensive collection of documents produced by a team of 300 experts, guided by a 60-member advisory committee, as authorized by the Global Change Research Act of 1990. Pub. L. No. 101-606 (16 U.S.C. § 2921 *et seq.*). Of its thirty chapters, most present information on the impacts of climate change. Five chapters focus on responses, including one chapter on mitigation. Chapter 27, “Mitigation,” says that, in the absence of comprehensive national climate legislation, “a variety of policies and measures that lower emissions are currently in place at federal, state, and local levels in the United States.” *Assessment* at 649 (2014).

What about tribal governments? Looking into chapter 27, “Mitigation,” I searched for some discussion about roles of Indian tribes in reducing GHG emissions. My search was in vain. It’s not there.

Why would tribal governments be interested in helping to reduce GHG emissions? For one set of reasons, the transition to the renewable energy future offers potential for a kind of economic development that could yield substantial benefits in Indian country, including jobs. While there is a need for better data, “most studies suggest that renewable energy deployment can be associated with net job creation.” International Renewable Energy Agency, *IRENA Working Paper: Renewable Energy Jobs: Status, Prospects & Policies* 4 (2011), available at [www.irena.org](http://www.irena.org). Other benefits of renewable energy include enhanced energy security, reduced energy price volatility, and improved access to energy services. *Id.* at 5. A case can be made that economic development featuring efficiency and renewable energy can yield a generally enhanced quality of life.

What would it take for a fair share of this kind of development to happen in Indian country? The marketplaces in which energy goods and services are bought and sold have been shaped and distorted by decades of governmental policies. Historically, tribes have not had much input into the formation and regulation of the various energy marketplaces. Going forward, however, tribes are likely to become increasingly assertive in shaping energy marketplaces within their reservations, using some of the kinds of policy tools that states and local governments use. Tribes can also take steps to ensure that young tribal members have opportunities to acquire the knowledge and skills for jobs and entrepreneurship in the renewable energy economy.

For this kind of development to materialize in Indian country, proactive engagement by tribal leaders may well be a prerequisite, as will support from federal agencies. Without such leadership and support, I suspect that the communities of Indian country will lag behind, missing out on the benefits of the renewable energy future while experiencing some

of the burdens of the transition. I think that what we need is a collaborative intertribal-federal initiative to catalyze tribal government engagement in reducing GHG emissions through energy efficiency and renewable energy. There are many places in Indian country where progress toward the renewable energy future is underway, but you wouldn’t know this from the text of chapter 27 of the *Assessment*. (Looking closely, there is one reference to tribal communities in a table, *Assessment* at 660 Table 27.2, 665 n.72, citing a US Environmental Protection Agency (EPA) website, [www.epa.gov/statelocalclimate/tribal](http://www.epa.gov/statelocalclimate/tribal), where one can find information about six tribal programs that are participants in EPA’s “Climate Showcase Communities Program.”)

Chapter 27 of the *Assessment* conveys an important message about the time frame for kicking the transition to renewable energy into gear. How much time do we have? Less than ten years. More specifically, in chapter 27, Key Message number 2 is:

To meet the lower emissions scenario (B1) used in this assessment, global mitigation actions would need to limit global carbon dioxide emissions to a peak of around 44 billion tons per year within the next 25 years and decline thereafter. In 2011, global emissions were around 34 billion tons, and have been rising by 0.9 billion tons per year for the past decade. Therefore, the world is on a path to exceed 44 billion tons per year within a decade.

In other words, we have about ten years to stop the growth in global emissions of carbon dioxide and reverse the trend, if we are to have much hope of realizing the lower emissions scenario used in the *Assessment*. As explained in appendix 5 of the *Assessment*, the “lower emissions scenario (B1)” is taken from *Special Report on Emissions Scenarios: A Special Report of Working Group III of the Intergovernmental Panel on Climate Change* (2000), [www.ipcc.ch/ipccreports/sres/emission/index.php?idp=0](http://www.ipcc.ch/ipccreports/sres/emission/index.php?idp=0). As described in Appendix 5, the “B1 scenario represents a world with lower population growth, higher economic development, a shift to low-emitting efficient energy technologies that are diffused rapidly around the world through free trade, and other conditions that reduce the rate and magnitude of climate change as well as increase capacity for adaptation.” *Assessment* at 821.

Ten years is not much time to change the trend of global emissions. As stated in Key Message number 5 in chapter 27: “Over the remainder of this century, aggressive and sustained greenhouse gas emission reductions by the United States and by other nations would be needed to reduce global emissions to a level consistent with the lower scenario (B1) analyzed in this assessment.” *Assessment* at 649.

Chapter 27 includes some discussion of federal actions; city, state, and regional actions; and voluntary actions. *Assessment* at 654–56. While it does not discuss what tribal governments are doing to contribute to reducing GHG emissions, one might read the discussion of federal, city, state, and regional actions as suggestions for actions that tribal governments could take. I doubt, though, that the authors of chapter 27 had that in mind.

After nearly forty years working in the Indian law and policy arena, I’ve learned that when most people in this country talk or write about “all levels of government” they mean federal, state, and local, and the notion that Indian tribes are

governments doesn't cross their minds. This still bothers me, though, especially when I read a report issued under the auspices of the federal government on a topic that, in my mind, at least, has obvious implications for tribal governments, implications that apparently were not so obvious to the author(s) of the document at issue.

The *Assessment* does not completely ignore Indian tribes. In fact, the *Assessment* includes a chapter captioned "Indigenous Peoples, Lands, and Resources," which discusses the nature of climate change impacts on the homelands of federally recognized tribes, with considerable attention to tribes in Alaska. *Assessment, Chapter 12*. And one of the findings in the *Highlights* book states: "Climate change poses particular threats to Indigenous Peoples' health, well-being, and ways of life." *Assessment, Highlights*, at 14. Chapter 12 discusses some of the challenges that tribal communities face in fashioning adaptive responses. Mitigation, however, is not discussed in chapter 12.

Maybe it's too much to expect that the one chapter of the *Assessment* addressing mitigation might specifically include tribal governments in the analysis. The *Assessment*, after all, is mostly concerned with describing the nature of the impacts that are happening now and that are projected, an emphasis that reflects its statutory mandate. 15 U.S.C. § 2936.

But where would one look to find a discussion of what tribal governments are doing, or might do, to contribute to reducing GHG emissions, and how the federal government could help them? How about the *President's Climate Action Plan* (June 2013) (*Plan*)? [www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf](http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf). The *Plan* is divided into three main headings: mitigation, adaptation, and international leadership. The adaptation part of the *Plan* does expressly provide for engagement of tribes, including representation on a State, Local, and Tribal Leaders Task Force on Climate Preparedness. The mitigation part of the *Plan*, however, does not include any substantive discussion of tribal governments, although there are a couple of passing references. At 7, 11.

One particular component of the mitigation part of the *Plan* really should include some specific attention to tribal communities, "Expanding the President's Better Buildings Challenge." *Plan*, at 9–10. The *Plan* says that the administration is launching "a new track that will support and encourage adoption of State and local policies to cut energy waste, building on the momentum of ongoing efforts at that level." *Plan*, at 10. What about tribal policies? Searching the website for the Better Buildings Challenge, [www4.eere.energy.gov/challenge/home](http://www4.eere.energy.gov/challenge/home), I found no mention of tribal governments.

To rectify this omission, I call for a Better Buildings Challenge for Indian country. Construction and operation of buildings, and activities conducted within buildings, account for a major portion of GHG emissions in the United States, by some estimates more than 40 percent. See [http://architecture2030.org/the\\_problem/buildings\\_problem\\_why](http://architecture2030.org/the_problem/buildings_problem_why). We know

how to design buildings so that their fossil-fuel consumption is net zero. Architecture 2030 has issued the 2030 Challenge, calling for net zero (carbon neutral) to be the standard practice for new construction by 2030.

If we could make net zero the standard in Indian country, how much energy could we save while still providing the full range of energy services? I suggest we start with a focus on meeting the need for new homes, about 200,000 units. According to the Energy Information Administration, the average home in the United States consumes 89.6 million Btu per year (using 2009 data). [www.eia.gov/consumption/residential/data/2009/index.cfm?view=consumption](http://www.eia.gov/consumption/residential/data/2009/index.cfm?view=consumption). Multiplying by 200,000 homes yields 17.9 trillion Btu, or 5.24 billion kWh, or 3.09 million barrels of oil. Meeting the need in Indian country with net-zero homes would save about this much energy *every year*. This is just a ballpark estimate. It should be refined using more specific data and taking into account factors such as regional differences in heating and cooling loads.

What would it take? For starters, the Department of Energy should make its Building Energy Codes program available to tribal governments and conduct a major outreach program to help tribes adopt and implement energy efficiency building codes. Although the statutory language authorizing this program does not mention tribes (42 U.S.C. § 6833), that should not prevent DOE from providing technical assistance. In the rest of America, pursuant to this statutory authority, the International Energy Conservation Code has become a key governmental policy tool in making new buildings more efficient. Tribal governments could use some federal help in making use of this tool.

Tribes could also use some federal help in making financing available for investments in energy efficiency and renewable energy. The new Energy Efficiency and Conservation Loan Program of the Rural Utilities Service in the US Department of Agriculture is intended to help finance such investments in rural America. 78 Fed. Reg. 73,356 (Dec. 5, 2013). It may take some extra effort to make sure this program reaches Indian country. Here's another idea: amend the federal tax code to allow tribes to use bond financing like states and local governments. See Dean B. Suagee, *Tribal Climate Crisis Tax-Exempt Bonds*, 28:2 NAT. RES. & ENV'T. 57 (Fall 2013).

Those are just a few ideas. One point of calling this project a "challenge" is to invite ideas from interested people: tribal leaders and staff; those who work for federal, state, and local agencies; educational institutions; and the private sector. A net-zero fossil-fuel standard for new homes is doable. Let's make it happen for Indian families. 🌳

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