

**IN THE COURT OF APPEALS OF THE STATE OF OREGON**

NORTHWEST NATURAL GAS COMPANY, AVISTA CORPORATION,  
and CASCADE NATURAL GAS CORPORATION,  
Petitioners,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent,

and,

NATURAL RESOURCES DEFENSE COUNCIL,  
Intervenor-Respondent,

and,

BEYOND TOXICS, CLIMATE SOLUTIONS, ENVIRONMENTAL  
DEFENSE FUND, OREGON BUSINESS ALLIANCE FOR CLIMATE—dba  
OREGON BUSINESS FOR CLIMATE, and OREGON ENVIRONMENTAL  
COUNCIL,  
Intervenors-Respondents.

CA No. A178216 (Control)

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OREGON FARM BUREAU FEDERATION; OREGON BUSINESS &  
INDUSTRY ASSOCIATION; OREGON MANUFACTURERS AND  
COMMERCE; ALLIANCE OF WESTERN ENERGY CONSUMERS;  
ASSOCIATED OREGON LOGGERS, INC.; NORTHWEST PULP AND  
PAPER ASSOCIATION; OREGON ASSOCIATION OF NURSERIES;  
OREGON FOREST AND INDUSTRIES COUNCIL; OREGON TRUCKING  
ASSOCIATIONS, INC.; WESTERN WOOD PRESERVERS INSTITUTE;  
OTLEY LAND AND CATTLE, LLC; AND SPACE AGE FUEL, INC.,  
Petitioners,

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,  
Intervenor-Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178217

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WESTERN STATES PETROLEUM ASSOCIATION,  
Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

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**BRIEF OF *AMICUS CURIAE***  
**AFFILIATED TRIBES OF NORTHWEST INDIANS**

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January 2023

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## **I. STATEMENT OF INTEREST**

This *Amicus Curiae* brief is filed on behalf of the Affiliated Tribes of Northwest Indians (ATNI). ATNI is a 501(c)(3) nonprofit organization representing 57 Northwest Tribal governments from Oregon, Idaho, Washington, southeast Alaska, Northern California and Western Montana. This includes the nine federally recognized Tribes in Oregon.<sup>1</sup> These Tribal governments are unique sovereign governments that are not subsumed within, nor are they political subdivisions of, any State or of the United States federal government. In 1953, farsighted Tribal leaders in the Northwest formed ATNI, and dedicated it to Tribal sovereignty and self-determination. Today, ATNI is an organization whose foundation is composed of the people it is meant to serve.

ATNI developed its climate change program in 2014, in partnership with Portland State University's Institute for Tribal Governments, to ensure ATNI member Tribes are engaged and aware of the federal/state/Tribal climate change programs; serve as a clearing house for and coordinator of Tribal and intertribal efforts; support ATNI's participation in regional, national, and

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<sup>1</sup> ATNI's members located in Oregon: Burns-Paiute Tribe; Confederated Tribes of Coos, Lower Umpqua & Siuslaw; Confederated Tribes of Grand Ronde; Confederated Tribes of Siletz Indians; Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of Warm Springs; Coquille Tribe; Cow Creek Band of Umpqua; The Klamath Tribes.



international climate policy, adaptation and mitigation efforts; and support ATNI member Tribes in identifying and securing Climate Change funding to build Tribal capacity. ATNI continues to take action to support federal funding to address the impacts of climate change.

ATNI served as a formal member of the rulemaking advisory committee that informed the Climate Protection Program (CPP). Further, ATNI and some of its member organizations participated in government-to-government consultation as it developed these regulations.

ATNI offers a unique perspective for this matter. For the reasons detailed below, ATNI files this *amicus* brief in support of Respondents and Intervenor-Respondents to uphold the CPP.

## **II. STATEMENT OF THE CASE**

ATNI concurs with and incorporates by reference the statement of the case set forth in the brief of Respondents and Intervenor-Respondents.

## **III. SUMMARY OF ARGUMENT**

Tribes are unique sovereign governments that are disproportionately harmed by climate change. The State of Oregon through the Department of Environmental Quality (DEQ) and Environmental Quality Commission (EQC), has developed the CPP to help address these harms, and to reduce greenhouse gas emissions. The CPP will help Tribes through the availability of funding to

address the harms of climate change, and the State consulted with Tribes through the process.

#### IV. **ARGUMENT**

Tribes are unique sovereign governments that are disproportionately harmed by climate change. Tribes and Tribal communities experience disproportionate impacts from climate change in a variety of ways, including impacts from poor air quality, fires, droughts, flooding, human health, emergency response and other challenges that will impact our ways of life.

Status of Tribes and Climate Change Working Group (STACCCWG), *Status of Tribes and Climate Change Report*, Institute for Tribal Environmental Professionals, Northern Arizona University, 2021, *available at* <http://nau.edu/stacc2021> (Hereinafter “STACC”).

Through the CPP program, the State of Oregon seeks to repair some of the damage and prevent future harms to Tribes and Tribal communities and help these communities adapt to climate change impacts through Clean Energy investments. OAR 340-271-0010(3), OAR 340-271-0020(18). The CPP establishes a goal to reduce greenhouse gas emissions from covered sources that result from combustion of fossil fuels by 50 percent by 2035 and 90 percent by 2050 below average emissions in 2017 through 2019. Oregon Department of Environmental Quality Climate Protection Program Brief, Last updated 12/22/2021 *available at* <https://www.oregon.gov/deq/ghgp/Documents/PPP->

[Overview.pdf](#). The State, through the Department of Environmental Quality (DEQ) and Environmental Quality Commission (EQC), consulted with ATNI and Tribal governments during the development of the CPP. Richard Whitman, DEQ, “2021 Annual Government-to-Government Report on Tribal Relations,” Submitted to: Oregon Legislative Commission on Indian Services Oregon Environmental Quality Commission, Dec. 2021, Pages 17-18, *available at* <https://www.oregon.gov/deq/FilterDocs/deqTribalRep2021.pdf>.

The CPP is absolutely essential to achieving the state’s climate pollution reduction goals, and will enable hundreds of millions of dollars annually in investments in clean energy projects in Tribal, low-income, rural, coastal and other communities across the state through Community Climate Investments (CCI). <https://www.oregon.gov/deq/ghgp/Documents/PPCCIOverview.pdf>. OAR 340-271-0020(18).

**A. Tribes are Uniquely Susceptible to the Impacts of Climate Change**

Across the Pacific Northwest, climate change is leading to more heat, smaller snowpacks, earlier snowmelt, increased storm surge and flooding, ocean acidification, less groundwater, sea level rise, more droughts, and more fires. From 1895 to 2011, the average annual temperature in the Pacific Northwest has increased by 1.3°F. *See, e.g.,* University of Washington, “Climate Change” <https://cig.uw.edu/learn/climate-change/> (last visited Jan. 3, 2023).

Tribes and Tribal communities are particularly vulnerable to the impacts of climate change because of their deep spiritual and cultural connections and subsistence lifeways and close dependence on and connection with the natural environment for their culture, health, and livelihoods. *See, e.g.*, STACC. And while Indigenous people and communities are highly adaptable and possess incredible resilience, actions of the Federal government have left many of the Tribes with less land and fewer resources to protect their people and cultures from the impacts of climate change. *Id.* Most Tribes in Oregon have seen significant reductions in their land base as a result of Treaties with the United States, forced relocation, allotments, and later, termination.

Further, many Tribes have off-reservation Treaty rights whereby their members hunt and fish within their aboriginal homelands and areas of traditional use. Thus, the Tribes' rights are connected to specific places and resources – challenging Tribes' mobility and flexibility to move elsewhere in response to future changes from climate change.

### ***1. Short History of Tribes in Oregon***

To understand the distinct challenges faced by Tribes and Tribal governments, we provide a brief history of actions by the Federal Government that have been destructive to Tribes, Tribal sovereignty and access to land. Each Tribe has its own unique history and this section is in no way comprehensive. Indigenous people have inhabited the land in what is now known as the State of

Oregon since time immemorial. However, due to treaties, forced relocation and Termination through Acts of Congress, many Tribes are no longer able to utilize the full range of their traditional territory. Today, only about 904,000 acres, or roughly just 1.6 percent of land within Oregon's boundaries, are held in trust by the federal government or are designated reservation lands. Oregon Secretary of State, "Blue Book - Introduction to Native Peoples of Oregon," <https://sos.oregon.gov/blue-book/Pages/national-tribes-intro.aspx> (last visited Jan. 3, 2023). This reduction in land base has made Tribes more susceptible to climate impacts, including fires and droughts. It also impacts the ability of Tribal members to access and utilize Treaty rights to fishing, hunting and gathering, which are necessary for food sovereignty and food security.

During the Termination era in the 1950s, the United States formally disclaimed government-to-government relations with over one hundred federally recognized Tribes, including 62 in Oregon. *Id.* The goal of termination was to end federal supervision and control over the Indian "wards," weaken Tribal governments, and again to assimilate Indians, this time through government-sponsored relocation programs that moved Indians from reservations to large cities such as Portland, which today has one of the higher Urban Indian populations. Relocated individuals were offered minimal services and frequently suffered from poor health, poverty, exposure to racial prejudice and pressure to assimilate.

For example, The Klamath Tribes were targeted during the Termination Era for their extensive Timber, water rights, oil, and other natural resources.

Donald Fixico, Termination and Restoration in Oregon, available at

[https://www.oregon.gov/ode/students-and-family/equity/NativeAmericanEducation/Documents/SB13%20Curriculum/termination\\_and\\_restoration.pdf](https://www.oregon.gov/ode/students-and-family/equity/NativeAmericanEducation/Documents/SB13%20Curriculum/termination_and_restoration.pdf) (last visited Jan. 3, 2023) at 2. Due to

termination, the Klamath Tribes lost approximately 1.8 million acres, which was taken by condemnation. The Klamath Tribes, “Our History”,

<https://klamathtribes.org/history/> , (last visited Jan. 3, 2023). Further, many of the Tribes located along the Columbia River were dislocated and forcibly moved inland with the construction of the Bonneville dam.

ATNI formed in response to these actions, and following the era of termination, the “accomplishments, and vision, of the Tribes, collectively represented by ATNI, became the foundation of the era of self-determination.”

ATNI, “Our Story”, <https://atntribes.org/about/our-story/> . The Siletz were the second Tribe in the nation to achieve restoration. Oregon Secretary of State, “Blue Book - Introduction to Native Peoples of Oregon,”

<https://sos.oregon.gov/blue-book/Pages/national-tribes-intro.aspx> (last visited Jan. 3, 2023). In 1986, The Klamath Tribes were restored but the land was not returned. The Klamath Tribes, “Our History,” <https://klamathtribes.org/history/> last visited Jan. 3, 2023).

Today, Oregon is home to nine federally recognized Tribes. Most Oregon Tribes are “confederations” of three or more Tribes and bands. The Confederated Tribes of the Grand Ronde Community of Oregon includes over 30 Tribes and bands from western Oregon, northern California, and southwest Washington. Because of the forced relocation and removal, each Tribe’s area of interest extends far beyond its Tribal governmental center or reservation location. *See, e.g.*, Confederated Tribes of Grand Ronde, “Our Story,” <https://www.grandronde.org/history-culture/history/our-story/> (last visited Jan. 3, 2023).

Since the signing of the treaties, U.S. laws, policies, and practices have led to the loss of access and inherent rights to the lands, water, and plant and animal species. This loss of access and inherent rights is a major factor creating challenges for Indigenous peoples to adapt to and mitigate climate change. STACC.

## **2. *How Climate Change is Impacting Tribes in Oregon***

Tribes and Tribal communities experience disproportionate impacts from climate change in a variety of ways. This includes impacts from poor air quality, fires, droughts, flooding, human health, emergency response and other challenges that will impact our ways of life.

Some Tribes, like the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), have developed complete assessments and adaptation

plans to address these challenges. CTUIR, Climate Adaptation Plan, *available at* <https://ctuir.org/departments/natural-resources/climate-adaptation/ctuir-climate-adaptation-plan-final/> (last visited January 11, 2023). As climate change will impact all aspects of the environment and our peoples' connection with the environment, we provide a general overview of some of these impacts to Tribes and Tribal communities that the CPP will help remedy.

*a) Air Quality*

Greenhouse Gas emissions constitute air pollution, and the entities covered under the CPP are air contaminant sources. The EQC is charged with regulating and reducing air pollution from air contamination sources to protect the public health and welfare of the people of Oregon. ORS 468A.010. This includes Tribes and Tribal communities, which experience disproportionate impacts from poor air quality, which includes smoke/fine particulates, heat, and humidity, all of which can be connected to climate change. Further, these factors are believed to have impacted rates of mortality and morbidity from COVID-19. STACC, Ch. 4.1.

There are other ways climate change is causing problems for Tribal air quality. “Extreme heat and drought both lead to more frequent and more intense wildfire events, which can emit thousands of tons of pollutants. . . In addition to these increased levels of pollutants, higher air temperatures can lead to weather conditions that cause stagnation, trapping these pollutants in the



lower atmosphere where people live and breathe. Drought events associated with high temperatures can keep the air dirty, as falling precipitation tends to cleanse the air of these pollutants. . . . Rising CO2 levels contribute to increased growth and pollen levels in plants such as ragweed that cause human allergies and asthma attacks.” *Id.*

“Exposure to chronic smoke can cause respiratory issues in healthy people, and worsen existing respiratory issues like asthma and chronic pulmonary obstructive disorder (COPD).” CTUIR, Climate Adaptation Plan at 95. For the CTUIR, with wildfire increasing, “smoke from near and distant fires will create poor air quality conditions that restrict the ability for Tribal Members to safely exercise Treaty Rights,” which impacts ability to harvest First Foods. During wildfire, there may be a “7.6% per day increase in exposure to particle pollution during smoke events if Tribal members are outdoors without respiratory protection. This can be calculated to be 15-45% increase in smoke exposure potential during future fire seasons for Tribal members exercising Treaty rights.” CTUIR at 92, 95.

The CPP established a new program to set limits on greenhouse gas emissions from significant sources in Oregon, including large stationary sources, transportation fuels, and other liquid and gaseous fuels, which will help improve air quality and climate outcomes. OAR 340-271-0010. Further, the CPP will reduce the air contaminants that accompany greenhouse gas

emissions. OAR 340-271-0010(2)(b) and (c); OAR 340-271-0010(3). Because of the transboundary nature of climate pollution, Tribes need the CPP and the funding provided to succeed to improve air quality health outcomes.

*b) Impacts to Treaty Rights*

Many Tribes have retained the Treaty rights to hunt, fish and gather in their traditional territory. See *United States v. Dion*, 476 US 734, 737, 106 S Ct 2216, 2219, 90 L Ed 2d 767 (1986). “As a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them, unless such rights were clearly relinquished by treaty or have been modified by Congress.” citing F. Cohen, *Handbook of Federal Indian Law* 449 (1982). Treaty rights are important aspects of sovereignty and food security. Yet, these Treaty rights and First Foods are increasingly impacted by climate change.

Tribal fishing is one important recognized treaty right in the Pacific Northwest. Treaties with the federal government have guaranteed the right of many Tribes to “take fish” at their usual and accustomed grounds. A century’s worth of federal case law has established that these treaty rights are permanent in nature.

Courts have upheld the assumption that it is implied through treaty language that there would still be fish to catch as part of the secured right to take fish. As the court in *United States v. Washington* explained, the Tribes would have reasonably understood that they were being promised, in Governor

Stevens' words, "food and drink... forever." *United States v. Washington*, 853 F.3d 946, 964 (9th Cir. 2017). In this case, the court rejected the State's argument that the treaty right to take fish did not guarantee that fish would be available. Instead, the court stated that the Tribes would have "reasonably understood Governor Stevens to promise not only that they would have access to their usual and accustomed fishing places, but also that there would be fish sufficient to sustain them." *Id.* Ultimately, the court explained that the right to take fish also includes abundant fish runs and their habitat. *Id.*

The court also cited back to *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, where the Supreme Court wrote that during treaty negotiations the vital importance of the right to take fish to the Tribes was repeatedly emphasized by both sides, and that "it is accordingly inconceivable" that either party would have agreed to a treaty which would allow future tribal members to not have any meaningful use of their right to fish. *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 99 S. Ct. 3055 (1979). The court there also emphasized that the treaty language provided for a "right of taking fish" which would be "secured" by the treaties. *Id.* at 678. It is an important distinction that it is the right of taking fish that is secured. The right to take fish implies a right to eat the fish. Without fish to consume, the right to take fish is meaningless, and the treaty

promise to allow Tribes to catch fish at their usual and accustomed fishing grounds is an empty promise.

In 2001, as a continuation of *U.S. v. Washington*, twenty-one Tribes argued that Washington State had a duty to preserve fish runs and habitat sufficient for the Tribes to earn a moderate living, specifically targeting state-owned culverts that impeded anadromous fish passage (thus the “Culverts Case”). In a 2017 decision, the Ninth Circuit Court of Appeals stated, in part, that the “fishing clause of Stevens Treaties guaranteed Indian Tribes' right to engage in off-reservation fishing and to take up to fifty percent of fish available for harvest,” and required that the state ensure that those fish would, in fact, be available. *United States v. Washington*, 853 F3d 946 (9th Cir 2017).

Additionally, the Court stated that the Tribes reasonably understood that not only that they would have access to their usual and accustomed fishing places, but also “that there would be fish sufficient to provide moderate living to Tribes, and Tribes’ right of access to their usual and accustomed fishing places would be worthless without harvestable fish.” *Id.*

These cases demonstrate that without fish to harvest, the treaties guaranteeing fishing rights are void. Climate change negatively impacts salmon and their habitat, and has drastically reduced the sizes of fish runs each year. Failing to mitigate climate change has a negative impact on treaty rights, such as fishing.

*c) Wildfires Are Increasing*

The western United States has seen a tremendous increase in the number and severity of fires. “Among the 11 western states, all 215 Tribes experienced episodes of “thick density” smoke (21–32  $\mu\text{g}/\text{m}^3$ ) between September 1, 2019, and September 30, 2020, affecting 149,608 square miles, or 95,749,120 acres, of Tribal land. For point of reference, this is nearly the size of the entire state of California, which is 105,000,000 acres.” STACC.

In 2020, climate-fueled wildfires burned over 1.2 million acres of the state. Oregon DEQ, Item A 000043, [https://www.oregon.gov/deq/EQCdocs/121621\\_ItemA.pdf](https://www.oregon.gov/deq/EQCdocs/121621_ItemA.pdf). Smoke from wildfires causes degraded air quality, which in turn causes respiratory issues and other health concerns, as discussed above. Further, there are environmental impacts from increased wildfires. Runoff after wildfires negatively affects streams and rivers, in turn negatively impacting treaty resources such as salmon. There are also concerns of soil erosion, which leads to increased flooding, adversely affecting cultural and treaty resources. *See, e.g., STACC at 290.*

For example, the Klamath Tribes suffered an incredible amount of damage to their sacred ancestral territory from the Two Four Two Fire in 2020 and the Bootleg Fire in 2021, including damage to hunting and gathering areas, damage to the cemetery and at least one home. Sage Van Wing, OPB, “Klamath

Tribes Assess Fire Losses,” Sept. 23, 2020,

<https://www.opb.org/article/2020/09/23/klamath-tribes-assess-fire-losses/> (last

visited Jan. 3 2023); Lucy Sherriff, “For Klamath Tribes, Bootleg fire leaves

devastating scars on ancestral hunting, fishing lands,” The Oregonian, Aug. 14,

2021,

[https://www.oregonlive.com/wildfires/2021/08/for-klamath-tribes-bootleg-fire-](https://www.oregonlive.com/wildfires/2021/08/for-klamath-tribes-bootleg-fire-leaves-devastating-scars-on-ancestral-hunting-fishing-lands.html)

[leaves-devastating-scars-on-ancestral-hunting-fishing-lands.html](https://www.oregonlive.com/wildfires/2021/08/for-klamath-tribes-bootleg-fire-leaves-devastating-scars-on-ancestral-hunting-fishing-lands.html) (last visited

Jan. 3, 2023).

“Projected changes in temperature and relative humidity are expected to lead to longer fire seasons and more severe fire weather in Oregon's Western Cascade Mountains, which in turn will result in larger, more frequent fires.”

Cristina Rojas, PSU, “Oregon’s Western Cascades Watershed to Experience Larger, More frequent fires, PSU study finds (Dec. 14, 2020)

[https://www.pdx.edu/news/oregons-western-cascades-watershed-experience-](https://www.pdx.edu/news/oregons-western-cascades-watershed-experience-larger-more-frequent-fires-psu-study-finds)

[larger-more-frequent-fires-psu-study-finds](https://www.pdx.edu/news/oregons-western-cascades-watershed-experience-larger-more-frequent-fires-psu-study-finds). In its Climate Adaptation Plan, the

CTUIR notes that with a 2.2°F (1°C) warmer future, “[m]uch of CTUIR’s

Ceded and traditional use areas are expected to experience 400-700% risk

increase within forested lands, and a 100-200% increase within grassland

habitats . . . . Wildfire poses serious risk to infrastructure, public safety,

wildlife and plants, and to air quality through the smoke generated.” CTUIR,

Climate Adaptation Plan at 34 (internal citations omitted).

Other Tribes in Oregon will also suffer similar harms from wildfires. Climate change has a direct correlation to intensity and frequency of fires, and without the State undertaking climate mitigation efforts, such as the CPP, wildfires will continue to disproportionately impact Tribes.

*d) Cultural Resources*

Cultural resources are negatively impacted by climate change. Tribal cultural resources include intangible cultural beliefs, practices, and traditions as well as tangible physical sites, landscapes, plants, and animals. Status of Tribes and Climate Change Working Group (STACCWG). (2021). *Status of Tribes and Climate Change Report*, Institute for Tribal Environmental Professionals, Northern Arizona University, Flagstaff, AZ. [Marks-Marino, D. (ed.)] <http://nau.edu/stacc2021> . Within the umbrella of cultural resources are First Foods. First Foods is a phrase that generally refers to traditional foods of Indigenous communities and particularly those that have provided sustenance and promoted health in those communities for countless generations. Tribal Climate Change Profile: *First Foods and Climate Change*, Northern Arizona University, Flagstaff, AZ (2011). First foods can include plants, animals, and water.

Cultural resources are susceptible to negative impacts from climate change. For example, climate change effects threaten traditional sites and artifacts. *Status of Tribes and Climate Change Report*, Institute for Tribal

Environmental Professionals, Northern Arizona University, Flagstaff, AZ.

[Marks-Marino, D. (ed.)], 216, <http://nau.edu/stacc2021> . Sea level rise, as well as runoff erosion risks damage or loss of these sites. *Id.* Increased storm surges, due to climate change, also lead to coastal erosion, putting culturally significant resources and places at risk. Increased wildfire prevalence and intensity also threatens traditional places throughout the region. *Id.* Longer fire seasons also put culturally significant food sources at risk.

“Other cultural impacts resulting from potential disturbances to plant and animal communities result from a multitude of primary and secondary effects, including changes to temperature, precipitation, sea level rise, wildfire, drought, and debris flows.” *Id.* “These in turn have the potential to alter traditional hunting and gathering practices, timing of spiritual practices, loss of local food sources, loss of traditional medicinal plants, and loss of traditional materials used for jewelry, sculptures, ceremonial pieces, basketry, nets, and lodgings.” *Id.*

Because climate change is a severe threat to Tribal cultural resources, mitigation measures, such as the Climate Protection Program, are crucial to protect these resources.

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**B. The State of Oregon is Required to Work with Tribes and Has Done so Throughout the Development of the CPP**

The State must mitigate the impacts from climate change and has an obligation to act to protect the public health and welfare of all people under ORS 468A.010. As sovereign entities, “Indigenous peoples should be consulted meaningfully from the earliest stages of policy and research development.” STACC at 34. Self-determination and intergovernmental relations are cornerstones of solutions for addressing global issues of climate change as well as opportunities for adaptation and mitigation.

The State of Oregon has a Tribal Government-to-Government Relations Program, which was developed in 1996 following then Governor Kitzhaber's signing of Executive Order (EO) 96-30. In 2001, the Oregon Legislature approved Senate Bill 770, which institutionalized the executive order into law. Under this law, state agencies are directed to improve their working relationships with the nine federally recognized Tribes in Oregon.

Throughout the CPP process, the State of Oregon has worked with Tribes to accomplish these goals. Staff from the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians’ (“CTCLUSI”) Council, as well as from ATNI, participated on DEQ’s Rules Advisory Committee that met throughout the first half of 2021 to advise on the development of the rules that DEQ has now proposed to the EQC. Richard Whitman, Director, DEQ, “2021 Annual

Government-to-Government Report on Tribal Relations,” Submitted to: Oregon Legislative Commission on Indian Services Oregon Environmental Quality Commission, Dec. 2021, 17-18.

Further, in 2021, DEQ’s Director and staff met with the CTCLUSI Council, the CTUIR, and the Confederated Tribes of the Grande Ronde. *Id.* According to DEQ, “[i]nput from [T]ribes throughout this extensive process has informed how the agency developed these proposed rules, including how the program includes specific provisions to produce a more equitable transition off of fossil fuels in Oregon’s Black, Indigenous and People of Color communities, and low-income communities, including [T]ribal communities.” Thus, the CPP is intended to promote effective participation of impacted communities in program design. OAR 340-271-0950; DEQ, “Issue Brief: Technical Workshop: Impacted Communities” Meeting Date: Sept. 17, 2020, *available at* <https://www.oregon.gov/deq/ghgp/Documents/CapRed-W6IssueBrief.pdf><sup>2</sup>

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<sup>2</sup> “Impacted communities is without an official definition in Oregon and therefore can refer to a variety of underrepresented, marginalized and vulnerable communities. The term can refer to underrepresented populations, rural communities, and Oregonians who may disproportionately experience the impacts of climate change or a program to cap and reduce greenhouse gas emissions. Impacted communities also means environmental justice communities, communities of color, low-income communities, and Tribal and indigenous communities.”

### **C. The CPP will Help Tribes Address Climate Change through Funding for Clean Energy Projects**

Tribes are already taking action to adapt to climate change in ways that respect sovereignty, but need additional funding to accomplish their goals. The CPP will help ATNI and Tribes through the availability of a sustained source of funding for clean energy work. Covered fuel suppliers can earn Community Climate Investments (CCIs) credits by contributing funds to third-party entities to implement projects that reduce greenhouse gas emissions in Oregon. This mechanism will be beneficial to Tribes.

CCI entities, DEQ and the equity advisory committee will conduct outreach to environmental justice communities throughout Oregon to seek input on projects that may be of interest to those communities. OAR 340-271-0950.

Oregon Tribes will use the funding available from the CPP to increase their resilience to climate change, while also achieving Tribal priorities that align with their cultural values, needs, and perspectives. For any general funds that are received that do not have any limitations imposed upon their use, it is easy to envision that Oregon Tribes may choose to reinvest those funds in land acquisition efforts that allow them to improve their access to land, water, and resources that are important not only for subsistence and cultural purposes, but also to maximize opportunities for Tribal sovereignty and self determination. In addition, it is likely that Tribes will invest funds in habitat restoration efforts,

cultural revitalization, workforce development, Tribal energy sovereignty, clean energy infrastructure, economic development opportunities, infrastructure improvements, and more. Fleishman, E., editor, Sixth Oregon climate assessment, Oregon Climate Change Research Institute, Oregon State University, at 222, 2023 available at <https://blogs.oregonstate.edu/occri/oregon-climate-assessments/>. Tribes will certainly use unrestricted funds to achieve their Tribal priorities and in achieving their priorities, the Tribes will become increasingly resilient to the impacts of the climate crisis.

Oregon Tribes are already actively pursuing a number of initiatives related to climate change adaptation, and this available funding will bolster these efforts. *See, e.g.*, CTUIR, Climate Adaptation Plan; Upper Snake River Tribes Foundation Climate Change Vulnerability Assessment, February 2017 available at <https://uppersnakerivertribes.org/app/uploads/files/usrt-climate-assessment.pdf>. The CTCLUSI has hired a climate resilience program coordinator and is actively developing a Tribal vulnerability assessment. In addition, the Coquille Tribe, Confederated Tribes of the Warm Springs Reservation, CTUIR, Siletz, and Burns Paiute Tribes have sent Tribal staff and leaders to ATNI's Tribal Climate Camps, which provide culturally appropriate workshops for Tribal leaders, staff, and citizens to learn about climate adaptation planning. *See*, [www.atntribes.org/climatechange/tcc/](http://www.atntribes.org/climatechange/tcc/). The CTCLUSI passed a resolution to explore offshore wind energy development.

The Siletz are pursuing tribal energy sovereignty. Northern Arizona University, “Siletz - Tribes & Climate Change,”

[https://www7.nau.edu/itep/main/tcc/Tribes/pn\\_siletz](https://www7.nau.edu/itep/main/tcc/Tribes/pn_siletz) (last visited Jan. 3, 2023).

In addition, the Burns Paiute Tribe has been able to revitalize cultural traditions and practices that help to maintain cultural connections to salmon, their ancestors, and community by releasing salmon into streams from which they have been extirpated. USFWS, “Burns Paiute Tribe Celebrates Ancient Traditions with Salmon Release and Harvest”

<https://usfwspacific.tumblr.com/post/146366574505/burns-paiute-tribe-celebrates-ancient-traditions> (last visited Jan. 3, 2023).

The funding available through the CPP will help the State meet its obligations to Tribes and Tribal communities. To ensure a just transition and to support Tribal sovereignty and self-determination, ATNI and Tribal governments must continue to be involved in how this funding is distributed, and the CPP is structured accordingly.

## V. CONCLUSION

For the reasons stated herein, ATNI urges the Court to rule in favor of Respondents and Intervenor-Respondents, and uphold the CPP.

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DATED this 11<sup>th</sup> day of January, 2023.

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**CERTIFICATE OF COMPLIANCE WITH  
BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

I certify that this brief complies with the word count limitation in ORAP 5.05(1)(b)(ii)(A), with a word count of 4,525 words.

I certify that the font size used in this brief is not smaller than 14-point for both the text and the footnotes, as required by ORAP 5.05(1)(b)(ii)(A).

DATED this 11<sup>th</sup> day of January, 2023.

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I certify that service of the foregoing brief will be accomplished on all parties of record by the appellate court e-Filing system at the participants' email addresses as recorded on January 11, 2023, in the appellate court e-Filing system:

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