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Additional submitted attachment is included below.

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California Energy Commission
Docket Unit, MS-4 | Docket No. 19-ERDD-01
1516 Ninth Street, Sacramento, California 95814-5512
Via E-mail To: docket@energy.ca.gov

Re: Comments on Proposed Evaluation Criteria for Benefits and Impacts to Low Income and Disadvantaged Communities in EPIC Grant Funding

To All This May Concern:

The Blue Lake Rancheria submits these comments to inform the EPIC program's consideration of how to structure evaluation criteria for benefits and impacts to low income and disadvantaged communities.

Background of Tribal Low Income and Disadvantaged Community Status

To address what disadvantaged community means in a tribal context, it is important to consider the following. There are 573 federally recognized tribal nations in the United States, of which 109 are in California – almost 20% of all tribes are in this state, only Alaska has more. There are also dozens of non-federally recognized tribal communities in California, and a significant population of Native Americans in urban areas within the state. Tribes are sovereign governments, subject to federal regulation, and have a government to government relationship with states and their agencies.

The history of tribes as viewed through the disadvantaged communities lens is severe – tribes are still impacted by genocides and disease from the last 400 years. The most recent ~80 years or so have contained malign actions and impacts as well. As just one example, in the 1940s through 1960s, the federal government undertook the “Era of Termination” – which included the 1953 Indian Termination Act and other laws where tribes were disbanded and their lands sold. The companion policy of relocation or “assimilation” moved tribal members off reservations and into urban areas, and the accompanying commitments to job training and social services never materialized. Over 100 tribes were terminated by fiat in this way. Many tribes fought for and obtained reinstatement, after severe harm to their nations, cultures, economies, and environments.

The Era of Termination is only one of the failures of tribal policy in the last 80 years. Underfunding of, and barriers to healthcare have resulted in current Native American health statistics that are equally shocking.

Tribes frequently contend with issues that prevent quality medical care - geographic isolation, separation from medical facilities, and low incomes to pay for medical care are among the most serious (and interestingly, these same issues – isolation, limited resources, and high relative costs – also apply to tribes' access to energy). As an example, American Indians and Alaska Natives have an infant death rate 60 percent higher than the rate for Caucasians, and are twice as likely to have diabetes, which requires specialized medical care, which is often logistically and financially difficult to obtain.

In energy, promises of energy access for tribes -- made under laws such as the Rural Electrification Act in 1935 -- were not kept, and there are still large areas of tribal territories that have never had grid power. Tribes are often not included in energy policy considerations, and tribes are seldom included in eligibility / evaluation criteria within state programs. Concepts like “universal access” have not quite made it to Indian lands. Tribes are often at the ‘end of the line’ in terms of transmission, and so the quality of electricity is often poor – brown outs and complete outages are common. And historic and current barriers to energy development on tribal lands are significant – including but certainly not limited to varying ‘checkerboard’ tribal land ownership structures which make easements and construction legally and logistically complicated, with of course, high costs.

The legacy of these discrete and cumulative impacts is that tribes are still working to catch up in many areas. And this lag is why most tribes in California are indeed disadvantaged communities by most definitions. Further, many tribal communities have intersections where disadvantaged community and environmental justice conditions overlap – where their legacy disadvantages culminate and manifest in many different ways.

Issue with CalEnviroScreen 3.0

There is a need to base designations of disadvantaged and low income communities on equitable, unbiased, independently verifiable datasets. CalEnviroScreen 3.0 is an equitable tool for eligibility as disadvantaged communities as far as it goes. However, CalEnviroScreen 3.0 does not have a layer that includes tribal lands. The CalEnviroScreen 3.0 map shows that most tribal reservations are not impacted, which is not accurate.

There are other equitable data sets that can be obtained and incorporated that would provide a clearer picture of tribal community disadvantages. For example, CalEnviroScreen includes cardiovascular disease but not diabetes, and as noted above, Native Americans are twice as likely to have diabetes than non-Hispanic white populations.¹ CalEnviroScreen includes pesticides (agriculture) but not herbicides (forestry). It includes solid waste site facilities but not illegal dumps or capped and abandoned landfills. It includes poverty but not LIHEAP or food subsidy recipients, or tribal programs of these kinds. It does not include unemployment, drug and alcohol addiction, or spousal and child abuse, or suicides. It does not include cancer rates. It does not include substandard roads, rate of vehicular accidents and deaths, lack of access

¹ U.S. Department of Health and Human Services. <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlID=62> Accessed 2.26.2019.

to utilities including energy and telecommunications, and other logistic/cost inequities such as distance to healthcare and hospitals. There are nationwide (with California included) equitable data sets available from BIA, HUD, IHS, manpower consortium, and other sources that could be included in CalEnviroScreen or other tools to set criteria.

Further, CalEnviroScreen does not take into account toxic(s) hot spot(s) and contributing emission source non-compliance (notices of violations, consent decrees, high priority violators, etc.). Those data sets are equitable and can easily be plotted on the CalEnviroScreen map. It is our understanding that enhanced reporting of these emission sources is required under AB 617, and we recommend incorporating that reporting data into CalEnviroScreen or other tools to set criteria.

- In the proposed Evaluation Criteria 8 – 8.2, the tribe recommends adding language that identifies stationary and/or mobile source(s) of emissions nearby, and whether those source(s) have notices of violations or other non-compliance factors that create toxic hot spots that will be mitigated by the project.
- The Tribe recommends that CalEnviroScreen 4.0 include tribal data.
- As it is configured now, CalEnviroScreen 3.0 does not accurately reflect how tribes are disadvantaged and therefore should not be used as a criteria designation. Until it reflects tribal realities, we recommend all tribes be considered as disadvantaged.

Definition of Tribes as Disadvantaged Communities

In 2018, the SB 350 Disadvantaged Communities Advisory Group to the California Energy Commission and the California Public Utilities Commission adopted an “Equity Framework” with the following definition of “disadvantaged communities”:

“As defined in the Energy Equity Indicators tool, the Disadvantaged Communities Advisory Group (DAC AG) will adopt as the definition and advocate for equitable programming to reach all of the following communities (including community residents, workers, and businesses):

- CalEnviroScreen, as defined by Cal EPA,
- Tribal Lands,
- Census tracts with area median household income/state median income, less than 80%, and
- Households with median household income less than 80% of Area Median Income (AMI).”²

The EPIC program may want to consider the components of this definition – including tribal lands – within its evaluation criteria.

² Please see: <https://www.energy.ca.gov/sb350/DCAG/documents/index.html> and [file:///C:/Users/jganion/Downloads/TN224742_20180917T165814_Disadvantaged_Communities_Advisory_Group_Equity_Framework%20\(1\).pdf](file:///C:/Users/jganion/Downloads/TN224742_20180917T165814_Disadvantaged_Communities_Advisory_Group_Equity_Framework%20(1).pdf)