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**U.S. Governmental Advisory Committee**  
*Independent Federal Advisors  
on the North American  
Agreement on Environmental Cooperation*

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**Committee Members**

Jeffrey Wennberg  
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*Vermont*

Charles Collette  
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*Campo Band of  
Kumeyaay Indians*

Michael Linder  
*Nebraska*

Vincent Nathan  
*Michigan*

Cindy Padilla  
*New Mexico*

Carlos Rubinstein  
*Texas*

Robert R. Scott  
*New Hampshire*

Carola G. Serrato  
*Texas*

Ellen Smyth  
*Texas*

Colin Soto  
*Cocopah Tribe*

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

The Government Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its thirty third meeting on October 14 and 15, 2009, in Burlington Vermont.

Much of the attention of both the CEC and the GAC has understandably been directed to the special environmental and human health challenges confronting the U.S. and Mexico, particularly along the border. The GAC appreciated the opportunity presented by this meeting to turn our attention northward and become better acquainted with the issues along the Canadian Border, and to learn more about how the states, provinces and nations are addressing them.

During the meeting we were informed of a broad range of environmental issues, programs and progress at the border between the United States and Canada. We appreciate the presentations made by Justin Johnson, Commissioner of the Vermont Department of Environmental Conservation, John Shea, of the New England Governor's Conference, Ted Diers, of the New Hampshire Coastal Program and Harold Garabedian from the U.S. - Canada International Joint Commission. It was also great to have the participation of Ms. Kate Renehan and Ms. Kelsey O'Neil from EPA's New England Regional Office at our meeting.

We also received a report from Dinker Desai, representing the Joint Public Advisory Committee (JPAC). Mr. Desai came to our meeting on extremely short notice in place of Nelly Correa, JPAC Chair, who was unable to attend. Mr. Desai did an admirable job of reporting the JPAC's activities despite the fact that he had almost no time to prepare.

We are grateful for the report from Sylvia Correa about the post-Denver progress of the Joint Ministerial Statement and status of the CEC. Our discussions at the meeting and the following advice principally address that statement and the "Proposal to Examine the Governance of the CEC and the Implementation of the NAAEC" dated September 17, 2009.

We would also like to thank Mike Stahl, Director of the Office of Regional and Bilateral Affairs for his August 3, 2009 letter responding to our advice letter of June 4, 2009. His thoughtful and detailed response helps us to follow the progress of our recommendations and enhances our ability to provide useful advice in the future. The committee specifically requested that I acknowledge and express appreciation for the degree to which you are embracing many of our past recommendations and are seeking agreement with the other Parties to implement them.

As always, we sincerely appreciate the participation from EPA's Office of International Affairs and the Office of Cooperative Environmental Management. In addition to Sylvia Correa of OIA, Rafael de León, Mark Joyce, Oscar Carrillo, Stephanie McCoy, Jannell Young-Ancrum and Lois Williams from OCEM staffed and supported our meeting.

On a personal note, it was my pleasure to host this joint meeting of the GAC and NAC in my home state of Vermont. Since being appointed to the GAC I have enjoyed the hospitality of your wonderful staff and many of my fellow NAC and GAC committee members, and have learned a great deal about both the unique and common environmental challenges faced by the three nations and their border communities. The opportunity to repay these courtesies was very much appreciated.

In conclusion, we appreciate EPA's continued support of our role in advising the United States Government on the enhancement of environmental conditions throughout North America, and look forward to supporting your efforts in the future.

Sincerely,



Jeffrey N. Wennberg, Chair  
Governmental Advisory Committee

cc: Michelle DePass, Assistant Administrator, EPA, Office of International Affairs  
Mike Stahl, Director, Office of Regional and Bilateral Affairs  
Rafael de León, Director, Office of Cooperative Environmental Management  
Oscar Carrillo, Designated Federal Officer  
Aldo Morell, Acting Chair, U.S. National Advisory Committee  
Alejandro Lorea H., Chair, Mexican National Advisory Committee  
Nelly Correa Sandoval, Chair, Joint Public Advisory Committee  
Evan Lloyd, Interim-Executive Director, CEC  
Members of the U.S. Governmental Advisory Committee:

Charles "Chip" Collette	Carlos Rubinstein
John Duffy	Robert Scott
Lisa Gover	Carola G. Serrato
Michael Linder	Ellen A. Smyth
Vincent R. Nathan	Colin Soto
Cindy Padilla	

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2009-3:**

**Review of Draft CEC Governance Proposal**

The members of the GAC appreciate the fresh perspective on the governance of the CEC and implementation of the NAAEC expressed in the June, 2009 *Joint Ministerial Statement* and the Draft CEC *Governance Proposal*. The GAC also applauds the decision of the ministers to reject the draft 2010 Operational Plan and treat 2010 as a transitional year; maintaining on-going programs but using the time to thoughtfully consider how best to “renew, revitalize and refocus the CEC to better serve the environment and citizens of our countries.”<sup>1</sup>

The alignment of a new administration in Washington and the requirement of a new five-year CEC strategic plan creates a rare opportunity to look anew at the mission, governance, structure, programs and resources of the CEC to “enhance accountability, improve transparency of the Secretariat’s activities, ensure alignment with Council priorities, and set performance goals.”<sup>2</sup> The GAC has been charged to offer advice on the measures the United States could propose to best accomplish the objectives described in the *Joint Ministerial Statement*, in anticipation of the development of a specific proposal by mid-July.

Concerns for the need to refocus the CEC and improve accountability and transparency of the Secretariat are common themes expressed in many prior advice letters. The GAC has reviewed our past advice and where we believe it remains relevant to the current situation it is referenced or repeated here, but the context is fully grounded in the June 2009 *Joint Ministerial Statement* and the draft *Governance Proposal*.

**1. Narrow and define the CEC’s general mission**

In their June, 2009 *Joint Ministerial Statement*, the ministers expressly adopted the following as the policy foci of CEC’s Strategic Plan for 2010-2015:

- Healthy Communities and Ecosystems
- Climate Change – Low Carbon Economy
- Greening the Economy in North America

The GAC endorses these priorities and encourages their careful translation into activities and programs with measurable outcomes and finite objectives.<sup>3</sup> In our Advice 2009-1 the GAC used the term “Policy Coherence and Cooperation” as the potential guiding principle for the five year strategic plan period. This was understood to mean focusing the CEC’s efforts at tri-lateral harmonization of policy (where possible) and promoting greater cooperation among the Parties.

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<sup>1</sup> Commission for Environmental Cooperation Ministerial Statement, Sixteenth Regular Session of the CEC Council; Denver, Colorado, 24 June 2009

<sup>2</sup> *Ibid*

<sup>3</sup> The GAC notes the similarities with our Advice 2009-1 on refocusing discretionary activities of the Secretariat on the following list of potential priorities: air, energy and climate change; greening the economy; healthy communities (environmental justice); and water resource reporting and tri-lateral coordination of bi-lateral efforts.

## **1. Explicitly relinquish the Puebla Declaration.**

The GAC observed in its 2007-7 advice on the draft Operational Plan, “The GAC is concerned that the language of the Puebla Declaration has been adopted, but that its principles have not.” The GAC has repeatedly observed that the Secretariat and its Annual Operational Plans has never fully embraced the principles of the three pillars of Information for Decision-making, Capacity Building and Trade and the Environment. The purpose of the Puebla Declaration was to more narrowly focus the CEC on a short list of high priority activities, and in this respect it was similar to the June 2009 *Joint Ministerial Statement*. In practice, however, the Declaration did not succeed. The GAC observes that the three pillars were never positioned to produce clear results, and offers this observation to illustrate the importance of doing so in the current effort. The GAC believes that notwithstanding the best intentions and obvious value of the three pillars, they should be explicitly relinquished in favor of new priorities, reflecting the challenges and opportunities facing the North American environment over the next five years, and doing so in a way that can successfully refocus the CEC’s activities by linking the priorities to clear and measurable results.

## **2. Limit the number of projects**

As stated in our Advice 2009-1, the GAC recommends that the CEC limit the number of Article 10 projects that can be undertaken at any time. The number chosen as the limit would be informed by the need to focus resources and limit transaction costs. The GAC is sensitive to the issue of project size, given that transaction costs (in money and time) are roughly equivalent for both small and large projects. We recognize, however, that some small projects may offer substantial benefits and fully justify their transactional investment. Limiting the total number of projects would encourage larger efforts, but not prohibit small ones. Assuming that the CEC is operating at the limited number of projects, any new proposal would have to be seen as a higher priority than the project or program it displaces. Furthermore, the project number limit should help encourage the choice of limited duration efforts that are planned to be concluded and closed at the time of their adoption. The GAC also recommends that as new projects are undertaken or continuing projects renewed, the project scope needs to include follow-up reports to document the impacts or benefits resulting from the project at key milestones or after the project is completed.

## **3. Limit the nature of projects**

As stated in our Advice 2009-1, the GAC reviewed the list of potential CEC functions under Article 10§2, and recommends that those items that the parties are doing unilaterally should not be undertaken by the CEC. From the Article 10§2 list, these items are b, d, e, f, h, j, k, l, n, and p. This leaves the following as eligible activities based upon this recommended criteria:

- a. comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this agreement;*
- c. approaches and common indicators for reporting on the state of the environment;*
- g. transboundary and border environmental issues such as long-range transport of air and marine pollutants;*

- i. the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;*
- m. environmental implications of goods throughout their life cycles;*
- o. the exchange of environmental scientists and officials;*
- q. ecologically sensitive national accounts;*
- r. eco-labeling; and*
- s. other matters as it may decide.*

#### **4. Set measurable goals for programs, management and staff**

The Draft CEC *Governance Proposal* contains recommendations on the need for establishing performance goals and evaluative reviews for Secretariat staff. The GAC endorses this concept but offers no specific advice as this is essentially an internal administrative matter. The *Governance Proposal* offers similar guidance in relation to the direction given to future Secretariat executive directors upon assuming their duties. The GAC also endorses this concept and believes that the executive director must be directly accountable to the Council, and that accountability is enhanced by clearly stated and measurable goals and the expectation of structured evaluative review.

Perhaps more important from the GAC's perspective is the need for similar measurable goals, structured evaluation, plus transparent reporting of programmatic expectations and performance. The GAC has offered advice in the past on various means of communicating program results and measuring performance, and we will not repeat those here. But the importance of institutionalizing the expression of specific program goals, measuring progress toward those goals and reporting that progress is vital if the CEC is to effectively link programmatic outcomes to the Council's strategic vision and communicate programmatic successes to broader constituencies.

#### **5. Address the lack of continuity of executive oversight at the Secretariat**

The GAC believes the lack of strategic focus at the Secretariat is partially caused by the rotating appointment of executive directors every two years. Given the tri-lateral nature of the organization, we appreciate the need to engage executive leadership even-handedly, but two years is not a sufficient length of time for any individual to steer the institution in a new direction. Standing committees and staff possess the institutional knowledge needed to implement change but are understandably hesitant to do so knowing that the current chief executive will be replaced in less than 24 months and the replacement may have a very different set of priorities.

The GAC suggests two means of addressing this problem. First, extend the term of the executive director to something like five years (consistent with the term of the strategic plan). The GAC understands that the CEC needs to be free to make changes in this appointment on a more frequent basis from time to time, but if the expectation is that the term is up to five years we believe it would make a significant difference. The other approach would be to create the position of deputy executive director with significant administrative authority, and with a potential for an extended term of office.

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2009-4:**

**Review of Draft Operational Plan for 2010**

The GAC shares the Council's concern that the draft Operational Plan proposed by the Secretariat represented too much a "business-as-usual" approach and supports the decision to continue Secretariat operations while undertaking thoughtful reconsideration of the CEC's role and administration.

Our Advice 2007-7 offered the following advice on that operational plan, which we believe is pertinent to the current situation:

*"The GAC is also concerned that the relevance of CEC activities to the lives of people is not addressed in the plan. For example, how has (or will) enhancing North American trade in green products and services improved the situation for people in their communities? Perhaps in later drafts there can be "side bars" with case studies relating past programs with real world benefits to real people.*

*The committee also would like to see the plan address long-standing concerns for the on-going nature of some of the programs given the continuing pressure on resources. The plan should state for each project, what constitutes 'success'. When a program is initiated is there a planned point at which it should 'sunset' and what is the sequence of decisions or actions necessary to close it down?*

*During the general session, there was a discussion of the value of adding a graphical summary of active and proposed programs, along the lines of a Gantt chart. The CEC may already use this tool for administrative and budgeting purposes but the GAC believes it would also help readers of the Operational Plan to see the planned life-cycles of CEC activities, looking perhaps five years into the future."*

The GAC wishes to emphasize in the context of the 2010 Operational Plan discussions that measures of success, clear project endpoints and comprehensive multi-year program reporting continue to be important recommendations. The GAC also recommends that as the CEC considers potential program initiatives within the three priority policy areas endorsed by the Council in Denver, they look to the September, 2009 Joint Declaration of the XXVII Border Governors' Conference for guidance on priority U.S. – Mexican transboundary environmental impacts assessments (link to Declaration document: <http://bordergovernors.org/en/pdf/XXVII-DC%20Monterrey2009.pdf>).

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2009-5:**

**Value of a two-border perspective**

The GAC very much appreciated the opportunity to learn about Northern border issues, especially given that much of the committee's past investigation and advice has centered on the South. While it was not clear that much of what was learned in this meeting about Northern border environmental initiatives or best practices is applicable to the Southern border, the committee thought it valuable to be briefed on northern border activities and would like to continue to learn about issues on both borders.

The GAC also realizes that the issues and challenges facing the Northeastern border are very different from those in the Midwest and Northwest, and different still along the Alaskan – Canadian border. Examples include the mining controversies in Washington State and the attendant complex tribal governance issues concerning responsibility, jurisdiction and damages. The GAC recommends that as new committee members are sought, individuals with direct knowledge of these Northwestern regional concerns should be considered, and if possible added to the committee.

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
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**Advice 2009-6:**

**Apply the surplus funds to community grants**

It was reported during the joint session that the CEC has an operating surplus of \$3 million. We were not briefed on the details of this, but it is our understanding that these funds are ‘earmarked’ but could be available for reallocation. It is the recommendation of the GAC that any funds which can be redirected should be reallocated to funding community grants. Priority should be given to projects that are regional in scope, offer an expectation of high environmental or health benefit for the funds expended, and are replicable in other communities or regions. Quickly funding projects that support the three priority policy areas; Healthy Communities and Ecosystems, Climate Change – Low Carbon Economy and Greening the Economy in North America, would help support an institutional transition to the priorities established through the Denver Ministerial Statement.