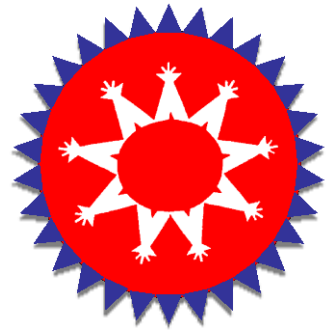




Oglala Sioux Tribe

Office of the President

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Julian Bear Runner

April 13, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable David L. Bernhardt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Tara Sweeney
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Mnuchin, Secretary Bernhardt, and Assistant Secretary Sweeney:

The Oglala Sioux Tribe previously submitted comprehensive comments on the allocation formula and methodology for the \$8 billion set-aside for Tribal governments in the CARES Act Coronavirus Relief Fund (CRF). This letter supplements our earlier comments.

Alaska Native Corporations (ANCs) Are Not Eligible for Coronavirus Relief Funds

Please do not allow Alaska Native Corporations to be counted as Tribal governments under the CRF. That would be contrary to the plain language of the CARES Act, and it would allow for ***double or triple counting*** of Alaska Natives since members of federally-recognized Alaska Native villages are also shareholders in Alaska Native Regional Corporations and Alaska Native Village Corporations.

The CARES Act allows for distributions to Tribal governments. In Alaska, the only Tribal governments are Alaska Native villages. They are listed on the Department of the Interior's List of Federally Recognized Tribes. Alaska Native Regional Corporations and Alaska Native Village Corporations are not Tribal governments. They are not listed on the Department of the Interior's List of Federally Recognized Tribes. They are state-chartered, for-profit corporations that were created pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971 to receive and

administer settlement funds and property on behalf of their shareholders, who are members of Alaska Native villages. There are thirteen (13) Alaska Native Regional Corporations and approximately 200 Alaska Native Village Corporations.

Treasury and Interior should not count Alaska Native villages as Tribal governments and then turn around and count Alaska Native Regional and Village Corporations as Tribal governments, too. This would lead to double or triple counting since, in all or nearly all cases, there are three layers for each Alaska Native village: federally-recognized Alaska Native village Tribal government; Alaska Native village Corporation; and Alaska Native Regional Corporation.

ANCs Are Not Tribal Governments

The Alaska Inter Tribal Council is a non-profit organization that advocates on behalf of Alaska Tribal governments, i.e. Alaska Native villages. This organization does not include Alaska Native Regional or Village Corporations because they are not Tribal governments. It would be wrong to include ANCs as Tribal governments in the CRF allocation formula because that would be ***double or triple counting*** ANCs as Tribal governments in addition to the actual Tribal governments: Alaska Native villages.

Some ANCs may ask the Alaska congressional delegation to secure funding for the Corporations under the CRF, but ANCs are not “Tribal governments,” as ANCSA makes clear. *Alaska Native Regional Corporations and Alaska Native Village Corporations are state chartered, stockholder-owned corporations, held by Alaska Natives. They are not Tribal governments.*

In contrast, Alaska Native villages are Indian Tribes and Tribal governments recognized by the Secretary of the Interior, as such, under the Federally Recognized Tribe List Act of 1994. Typically, for governmental purposes, the Administration has this definition of Indian Tribe: “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.” *Alaska Native Corporations are not included in this regular definition of Tribal governments.*

The Supreme Court addressed this issue in *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998), the Supreme Court explained:

In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian affairs that had previously marked federal Indian policy. ANCSA’s text states that the settlement of the land claims was to be accomplished

“without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship.*” [43 U.S.C.] §1601(b) (emphasis added).

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To this end, ANCSA revoked “the various reserves set aside . . . for Native use” by legislative or Executive action, except for the Annette Island Reserve inhabited by the Metlakatla Indians, and completely extinguished all aboriginal claims to Alaska land. §§1603, 1618(a). In return, Congress authorized the transfer of \$962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations that were to be formed pursuant to the statute; all of the shareholders of these corporations were required to be Alaska Natives. §§1605, 1607, 1613. The ANCSA corporations received title to the transferred land in fee simple, and no federal restrictions applied to subsequent land transfers by them.

Id. at 523-524. Alaska Native Corporation lands are not Indian lands, as the Supreme Court ruled in *Alaska v. Native Village of Venetie*, because they “are neither ‘validly set apart for the use of the Indians as such,’ nor are they under the superintendence of the Federal Government. 522 U.S. at 532.

Congress Did Not Include ANCs in the CRF Distribution

Title V, Section 5001 of the CARES Act amended the Social Security Act to add a new Title VI, Section 601, establishing the CRF. Section 601(a)(B)(2) of the Social Security Act appropriates “\$8,000,000,000 . . . for making payments to Tribal governments.” “Tribal government” is defined at Section 601(g) as “the recognized governing body of an Indian tribe,” and consistently appears in the Act alongside references to “States,” and other “units of local government”, including “the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.”

Section 601(b) outlines when payments of appropriated amounts must be made and requires Treasury to make such payments to Tribal governments, in amounts Treasury determines appropriate, no later than 30 days from the date of enactment.

Section 601(c) details the process for determining how the funds will be disbursed to each State, unit of local government, and Tribal government. With respect to determining the amount to distribute to each Tribal government, the Act requires Treasury to consult with “the Secretary of the Department of the Interior and Indian Tribes.” Notably, the purpose of this tribal consultation process -- which is currently underway -- is to determine the “appropriate” method “to ensure that all amounts . . . are distributed to Tribal governments.”

For purposes of the consultation – but not the distribution of funds – the Act uses the term Indian Tribe, which is defined in Section 601(g). This definition cross-references the definition of “Indian tribe” within the Indian Self-Determination and Education Assistance Act (“ISDEAA”) (25 U.S.C. § 5304(e)). ISDEAA defines “Indian tribe” as “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village *or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act* [(“ANCSA”)], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 5304(e) (emphasis

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added). Annually, the Interior Department publishes a list of Indian entities recognized by and eligible to receive services from the United States Bureau of Indian Affairs by virtue of their status as Indian Tribes, and that list does not include ANCs. *See* 85 Fed. Reg. 5,462 (Jan. 30, 2020).

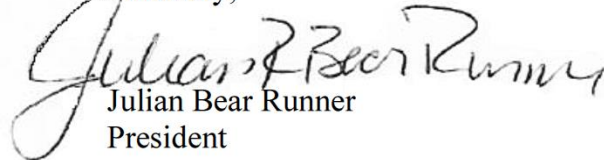
It is important to note the distinction between Alaska Native tribal villages and ANCSA regional or village corporations. Alaska Native tribal villages exercise sovereign governmental authority over their lands and citizens, possess a government-to-government relationship with the United States, and are “Tribal governments” under Section 601. Alaska regional or village corporations, on the other hand, are businesses incorporated under Alaska state law as authorized under ANCSA that do not have a political relationship with the federal government. Thus, they do not constitute “Tribal governments” under Section 601.

The CARES Act calls for a distribution of Coronavirus Relief Funds to “Tribal governments.” ANCs are not Indian Tribes on the Department of the Interior’s List of Federally Recognized Tribes, and there is no question that their boards of directors are not Tribal governments. ANCs are incorporated under state law and do not possess the same status as the “recognized governing body” of a federally recognized Indian Tribe. The CARES Act uses the term “recognized governing body” in the definition of “Tribal government,” which clearly pertains to a political body that serves the interests of “citizens,” the “body politic,” not shareholders, regardless of who the shareholders may be, or represent.

While the Assistant Secretary for Indian Affairs is an Alaska Native, who has worked for the Arctic Slope Regional Corporation, we do not believe it would be proper for the Bureau of Indian Affairs to advocate for ANC funding contrary to the Federally Recognized Indian Tribe List Act, 25 U.S.C. Sec. 479a. The Treasury Department must not allow for ***double or triple counting*** of any Indian Tribes when allocating Tribal government CRF funding.

Thank you for your thoughtful consideration of this important issue.

Sincerely,



Julian Bear Runner
President