



MESCALERO *Apache* TRIBE

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April 17, 2020

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

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

Dear Secretary Mnuchin and Secretary Bernhardt:

On behalf of the Mescalero Apache Tribe, we strongly oppose proposed actions of the Department of the Treasury (Treasury) and the Department of the Interior (Interior) to allow Alaska Native Corporations (ANCs) to be eligible for the Coronavirus Relief Fund (CRF) under Title V of the CARES Act. While we support funding for Alaska Native village tribal governments included on the Interior Department's list of federally recognized tribes eligible to receive federal services, Treasury and Interior cannot declare out of thin air that state chartered Alaska Native Regional and Village Corporations under Alaska Native Claims Settlement Act (ANSCA) are Tribal governments under the CARES Act. Interior admits as much given ANC's are not tribal governments set forth on Interior's list pursuant to the Federally Recognized Indian Tribe List Act of 1994 (List Act). To include ANCs in a relief fund to provide economic stabilization to governments is contrary to law and would set a dangerous precedent that would have greater negative implications beyond the CARES Act, including the delivery and fulfillment of trust and treaty obligations across the federal government. Such an action by this Administration would be an affront to our Tribal sovereignty and stand in violation of our sovereign-to-sovereign, government-to-government, nation-to-nation relationship with the United States.

Although ANCs are referenced in the first part of the definition of Indian tribe set forth in the Indian Self-Determination and Education Assistance Act (ISDEAA), ANCs do not qualify as Indian Tribes ***because they are not eligible for the special programs and services provided by the United States because of their status as Indians***. Only those entities listed on Interior's list of Indian entities recognized by and eligible to receive services from the BIA, most recently published on January 30, 2020, come within the definition of Indian tribe under the ISDEAA.

Construing the ISDEAA definition of Indian tribe to include ANCs completely misconstrues Congress' intent in the CRF and represents a misreading of the ISDEAA itself. Worse, distribution of crucial relief funds for tribal governments would be shortchanged by having

these funds distributed to entities that provide no governmental services or benefits to tribal members. Furthermore, this would allow for *double or triple counting* of Alaska Natives due to the fact that 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. However, only the tribal governmental entity provides tribal members governmental services and benefits.

It would be violative of law and also improper to include ANCs as Tribal governments in the CRF allocation formula because the crucial need and delivery mechanisms are with the Alaska Native Tribal governments not the ANCs. As the Alaska Native Claims Settlement Act (ANCSA) makes clear: *Alaska Native Regional Corporations and Alaska Native Village Corporations are state chartered, stockholder-owned corporations, held by Alaska Natives. They are neither tribal governments nor arms of tribal governments and should not be permitted to unfairly benefit from funds appropriated for tribal governments. In contrast, Alaska Native tribal governments are Indian tribes and tribal governments recognized by Interior under the List Act.*

For these reasons, we strongly urge that ANCs be excluded from the distribution formula for the CRF.

Sincerely,



Gabe Aguilar
President

cc: Senator Tom Udall
Senator Martin Heinrich
Rep. Xochitl Torres Small
Rep. Deb Haaland
Rep. Ben Ray Lujan