



FORT INDEPENDENCE INDIAN RESERVATION

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April 23, 2020

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

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

Re: Ensuring the Coronavirus Relief Fund is Disbursed to Tribal Governments

Dear Secretary Mnuchin and Secretary Bernhardt:

We write on behalf of the recognized governing body of the Fort Independence Indian Reservation to urge the Federal government to adhere to the United States Constitution, the letter of the law, and to Congressional intent in dispersing the Tribal government stimulus funds ("Title V Funds") exclusively to "Tribal governments" under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Section 5001. It is deeply concerning that, despite the clear mandate of the law, the Treasury appears to be poised to disperse these funds to for-profit, state-chartered Alaska regional or village corporations ("ANCs").

The Fort Independence Indian Reservation ("Fort Independence"), recognized by the United States under the name "Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California," is a federally-recognized Indian tribe. *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462-01, 5463 (Jan. 30, 2020) ("List").

Our Reservation was first established by a pair of executive orders in 1915. Like other Tribal governments, Fort Independence provides government services without access to funding sources available to other governments. Fort Independence relies on its small gaming operation to fill the gap left by its lack of tax revenue and lack of access to many of the direct federal programs available to other governments. The recent health crises has hit our gaming operation hard, negatively affecting our budget and our subsequent ability to provide essential governmental services to our Tribal citizens. This is exasperated by the decision of the Small Business Administration to preclude tribally-owned casinos, even small ones such as ours, from eligibility under the Paycheck Protection Program.

Because of our budget shortfalls caused by the Coronavirus health crises, Title V Funds are crucial to maintaining the health, safety and welfare of our tribal community. It is due to these budget shortfalls across Indian country that Congress defined "Tribal governments" eligible for Title V Funds as the "recognized governing body of an Indian Tribe." Section 601(g)(5).

As you have heard from other Tribes, "recognized" in federal Indian law is a term of art: it means Tribes which the Secretary of Interior "*recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*" 25 U.S.C. §5131(a) (emphasis supplied). ANCs are not federally "recognized" and for good reason.


First, as a general matter ANCs are not governments. They are private, for profit corporations owned by individuals. As such, they do not have not governmental budget to supplement. For this reason alone, ANCs are ineligible for Title V Funds pursuant to section 601(d)(2) (requiring State, Tribal, and local governments to use Title V Funds only to cover expenditures incurred due to the COVID-19 public health emergency that were "not accounted for in the budget most recently approved.")

Second, as corporations, ANCs have access to other sources of funding available under the CARES Act. Federally recognized tribes like Fort Independence, meanwhile, are stuck trying to fill budget shortfalls brought on by the COVID-19 public health emergency without other allocated sources of funding. Congress' intention under Title V was not to bail out large corporations by lining the pockets of their shareholders. It was to provide funding to governments required to fill budget shortfalls brought on by this pandemic.

Fort Independence respectfully requests that Treasury disperse the Title V funds exclusively to federally recognize tribal governments as the CARES Act requires and as Congress intended. To Fort Independence, this is not just about words on paper. Our government and identity as a Tribe are handed down by generations. They were not devised in a board room. We have fought to maintain our unique government structure and, as a government, struggle to meet the basic needs of our citizens. This is something the Secretary of Interior "recognizes" and something Congress carries forward in Section 601 of the CARES Act. To disperse any part of these Title V Funds to ANCs would not only violate the CARES Act, but would violate the trust responsibility the Federal Government owes to federally recognized tribes everywhere, potentially obligating the federal government, at the cost of federally recognized Tribes, to added responsibilities under a variety of federal laws to for profit, privately held ANCs.

FORT INDEPENDENCE INDIAN RESERVATION TRIBAL COUNCIL

By:



Carl Dahlberg
Chairman

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