

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 05-cv-00018-RPM-CBS

FORT PECK HOUSING AUTHORITY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HOUSING & URBAN DEVELOPMENT,
ALPHONSO JACKSON, Secretary of Housing & Urban Development, and
MICHAEL LIU, Assistant Secretary for Public and Indian Housing,

Defendants.

DEFENDANTS' MOTION TO AMEND JUDGMENT

The United States Department of Housing and Urban Development ("HUD"), Aphonso Jackson, in his official capacity as Secretary of HUD, and Michael Liu, in his official capacity as Assistant Secretary for Public and Indian Housing ("Defendants"), by their undersigned counsel, hereby moves pursuant to Federal Rule of Civil Procedure 59(e) for an order amending the judgment to clarify that the judgment applies to FPHA alone.

HUD notes that it disagrees with the Court's Memorandum Opinion and Order, but focuses in this motion solely on one aspect of the Judgment. In the Judgment, the Court directed that "24 C.F.R. s 1000.318 is declared invalid," that certain units must be included in Plaintiff's housing formula, and that Defendants must "take such administrative action as necessary to implement this ruling." HUD is not certain whether this direction provides

relief for only Plaintiff, or whether it also extends to HUD's calculations for all Indian tribes.

If this Judgment applies to all Indian tribes, HUD submits that it is in error and should be amended. First, applying the Court's decision to all tribes would in effect impose a nationwide injunction against the regulation, which would contravene the basic rule that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, Plaintiff brought suit alone, not as part of a class action. Applying the Court's relief to Plaintiff alone (which HUD can do) will provide it full relief. *See Virginia Society for Human Life, Inc. v. FEC*, 263 F.3d 379, 393-94 (4th Cir. 2001) (holding that the district court erred in barring the FEC from enforcing a provision nationwide).

Second, HUD submits that such a nationwide injunction would inappropriately extend into other jurisdictions. Prohibiting HUD from applying its regulation to any tribe nationwide would violate the well-settled principle that a decision as to an agency in one jurisdiction is not binding on the agency in other jurisdictions. *See Virginia Society*, 263 F.3d at 393-94 (noting that a nationwide injunction by a district court against the FEC violated this rule).

For these reasons, HUD respectfully requests that the Court modify the judgment to make clear that its direction applies only to HUD's treatment of Plaintiff.

7. Pursuant to D.C.COLO.LCivR. 7.1A, Plaintiff's attorney has been contacted regarding this motion, and Mr. Fredericks has indicated that he objects.

DATED this 9th day of June, 2006.

WILLIAM J. LEONE
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Counsel for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on the 9th day of June, 2006, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following e-mail addresses:

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and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand delivery, etc.) indicated by the nonparticipant's name:

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