

Ute Indian Tribe Secures Major Victory Protecting \$8 Billion in Covid-19 Relief Funding for Tribal Governments

FORT DUCHESNE, UT (Apr. 27, 2020) — The Ute Indian Tribe took swift action this past week to stop the Trump administration’s plan to distribute Covid-19 emergency relief funds to Alaska Native Corporations. In a ruling late today, a U.S. District Court in Washington, D.C. entered an order prohibiting the administration from distributing any of the \$8 billion designated for Indian tribal governments to any of the 200-plus ANCs.

Last week, the Ute Indian Tribe of Utah’s Uintah and Ouray Reservation filed one of three separate cases brought by Indian tribes to halt the federal government’s plan to disburse as much as 50 percent of the \$8 billion in relief aid to the for-profit ANCs. The cases were consolidated before U.S. District Court Judge Amit P. Mehta, who conducted a hearing on the tribe’s emergency motions for injunctive relief last Friday.

The Trump administration planned to distribute the funds on Tuesday, Apr. 28. Judge Mehta’s ruling late today prevents tomorrow’s distribution of relief funds from going to “any Alaska Native regional corporation or Alaska Native village corporation.”

The Ute Indian Tribe Business Committee offered its thanks to the judge for his quick and decisive ruling protecting the \$8 billion in COVID-19 relief funding. It also called on the Trump administration to distribute available COVID-19 relief funding as soon as possible.

“This money is for tribal governments, not for-profit corporations,” the Business Committee said in a statement. “Assistant Secretary Sweeney’s actions are another stain on the federal government’s trust responsibility and government-to-government relationship to Indian tribes.”

The monies in dispute are part of the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, which was enacted by Congress last month in response to the Covid-19 pandemic. Title V of the CARES Act provides for a total of \$150 billion in relief to state, local, and tribal governments, and specifies that the Treasury Department “shall reserve ... \$8 billion of such amount for making payments to tribal governments.”

Assistant Secretary for Indian Affairs Tara Sweeney, a former ANC board member, was among a small group of officials from the U.S. Department of the Interior that advised the Treasury Department on how to distribute the \$8 billion in rescue funding earmarked for tribal governments. Two weeks ago, Treasury Secretary Steven Mnuchin published on the Treasury Department’s website a form titled “Certification for Requested Tribal Data,” which all Indian tribes applying for the emergency funds were required to complete in order to qualify for the emergency funds.

In his ruling today, Judge Mehta specifically found that the certification form included “metrics specific to ANCs.” For example, it asked for information on the applicant’s land base, including any lands “selected pursuant to the Alaska Native Claims Settlement Act.”

Mnuchin argued that the Trump administration’s action was “not . . . subject to judicial oversight.” Judge Mehta rejected this argument, explaining that Congress limited the administration’s discretion by specifying that the \$8 billion were to be allocated to tribal governments.

While recognizing that injunctive relief is an “extraordinary and drastic remedy,” Judge Mehta still ruled that the Ute Indian Tribe and the other tribal plaintiffs satisfied all of the legal requirements necessary for an injunction.

First, Judge Mehta ruled that the Ute Indian Tribe and other tribal plaintiffs established that tribal governments would suffer irreparable injury if the Trump administration was not stopped from distributing some of the \$8 billion in emergency relief funds to ANCs. In its arguments to the Court, the Trump administration described the threatened harm to Indian tribes as simply “economic in nature.”

Judge Mehta rejected that argument, saying “[T]o characterize Plaintiffs’ claimed harm as merely ‘economic’ is terribly misguided. . . . these are monies that Congress appropriated on an emergency basis to assist tribal governments in providing core public services to battle a pandemic that is ravaging the nation, including in Indian country.” The Court also explained that once the funds were disbursed, the tribal plaintiffs would not be able to recoup the monies paid to the ANCs.

Judge Mehta then ruled that the Ute Indian Tribe and other tribal plaintiffs established a likelihood of success on the merits. The judge said he was persuaded that, presently, “no ANC is eligible for any share of the \$8 billion allocated by Congress for tribal governments.” He also ruled that the public interest and balance of equities supported his decision to enjoin the planned distribution of some of the relief funds to ANCs.

The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The tribe has a membership of more than 3,000 individuals, with more than half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land that contains significant oil and gas deposits. The Ute Business Committee is the governing council of the tribe, which remains engaged in legal battles with the state of Utah and local counties to protect its jurisdiction over lands that were specifically set aside and reserved by the federal government for the benefit of the tribe.

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