

Nos. 20-543 and 20-544

In the Supreme Court of the United States

JANET L. YELLEN, SECRETARY OF THE TREASURY,
PETITIONER

v.

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION, ET AL.

ALASKA NATIVE VILLAGE CORPORATION
ASSOCIATION, INC., ET AL., PETITIONERS

v.

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION, ET AL.

*ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

JOINT APPENDIX

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OCT. 21, 2020 AND OCT. 23, 2020
CERTIORARI GRANTED: JAN. 8, 2021

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 20-5204

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION; TULALIP TRIBES; HOULTON BAND
OF MALISEET INDIANS; AKIAK NATIVE
COMMUNITY; ASA'CARSAKMIUT TRIBE; ALEUT
COMMUNITY OF ST. PAUL ISLAND; PUEBLO OF PICURIS;
ELK VALLEY RANCHERIA, CALIFORNIA; SAN CARLOS
APACHE TRIBE; QUINAULT INDIAN NATION; NAVAJO
NATION; CHEYENNE RIVER SIOUX TRIBE, 20-cv-01059;
OGLALA SIOUX TRIBE, 20-cv-01059; ROSEBUD SIOUX
TRIBE, 20-cv-01059; NONDALTON TRIBAL COUNCIL,
20-cv-01059; ARCTIC VILLAGE COUNCIL, 20-cv-01059;
NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT,
20-cv-01059, PLAINTIFFS-APPELLEES

UTE TRIBE OF THE UINTAH AND OURAY INDIAN
RESERVATION, 20-cv-01070, PLAINTIFF-APPELLANT

v.

STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF U.S. DEPARTMENT OF THE TREASURY,
DEFENDANT-APPELLEE

AHTNA, INC.; ALASKA NATIVE VILLAGE
CORPORATION ASSOCIATION, INC.; ASSOCIATION OF
ANCSA REGIONAL CORPORATION PRESIDENTS/CEO'S,
INC.; CALISTA CORPORATION; KWETHLUK,
INCORPORATED; SEA LION CORPORATION; ST. MARY'S
NATIVE CORPORATION; NAPASKIAK, INCORPORATED;
AKIACHAK, LIMITED, INTERVENORS FOR
DEFENDANT-APPELLEES

DOCKET ENTRIES

DATE PROCEEDINGS

7/14/20 US CIVIL CASE docketed. [20-5204] [Entered: 07/14/2020 11:45 AM]

7/14/20 NOTICE OF APPEAL [1851545] seeking review of a decision by the U.S. District Court in 1:20-cv-01002-APM filed by Ute Tribe of the Uintah and Ouray Indian Reservation. Appeal assigned USCA Case Number: 20-5204. [20-5204] [Entered: 07/14/2020 11:46 AM]

* * * * *

7/14/20 CLERK'S ORDER [1851593] filed consolidating cases 20-5205 (Consolidation started 07/14/2020) with 20-5204. [20-5204, 20-5205] [Entered: 07/14/2020 02:11 PM]

* * * * *

7/14/20 MOTION [1851631] to expedite case filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes in 20-5205 (Service Date: 07/14/2020 by CM/ECF NDA) Length Certification: 3,940 words. [20-5205, 20-5204] (Kanji, Riyaz) [Entered: 07/14/2020 04:44 PM]

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DATE PROCEEDINGS

7/15/20 CLERK'S ORDER [1851757] filed consolidat-
ing case 20-5209 (Consolidation started
07/15/2020) with 20-5204 [20-5204, 20-5205,
20-5209] [Entered: 07/15/2020 12:14 PM]

* * * * *

7/20/20 RESPONSE IN SUPPORT [1852608] to mo-
tion to expedite case [1851631-2] filed by Ahtna,
Inc., Akiachak, Limited, Alaska Native Village
Corporation Association, Inc., Association of
ANCSA Regional Corporation Presidents/
CEO's, Inc., Calista Corporation, Kwethluk,
Incorporated, Napaskiak, Incorporated, Sea
Lion Corporation and St. Mary's Native Corpo-
ration in 20-5205, 20-5204, 20-5209 [Service
Date: 07/20/2020 by Email] Length Certifica-
tion: 312 Words. [20-5205, 20-5204, 20-5209]
(Clement, Paul) [Entered: 07/20/2020 07:55
PM]

7/21/20 PER CURIAM ORDER [1852762] filed grant-
ing motion to expedite case [1851631-2] in
20-5204, 20-5205. Setting briefing schedule:
BRIEFS OF APPELLANTS due 07/31/2020.
APPENDIX due 07/31/2020. BRIEFS OF
AMICI CURIAE SUPPORTING APPEL-
LANTS, IF ANY due 08/05/2020. BRIEF OF
APPELLEE MNUCHIN due 08/18/2020.
JOINT BRIEF OF INTERVENOR-
APPELLEES due 08/18/2020. BRIEFS OF
AMICI CURIAE SUPPORTING APPEL-
LEES, IF ANY due 08/20/2020. REPLY

DATE PROCEEDINGS

BRIEFS OF APPELLANTS due 08/26/2020.
(SEE ORDER FOR FURTHER DETAILS
AND SUBMISSION REQUIREMENTS.)
Before Judges: Rogers, Griffith and Pillard.
[20-5204, 20-5205, 20-5209] [Entered:
07/21/2020 02:11 PM]

* * * * *

7/31/20 APPELLANT BRIEF [1854649] filed by Ute
Tribe of the Uintah and Ouray Indian Reserva-
tion in 20-5204, Navajo Nation in 20-5205, Arc-
tic Village Council, Cheyenne River Sioux
Tribe, Native Village of Venetie Tribal Govern-
ment, Nondalton Tribal Council and Rosebud
Sioux Tribe in 20-5209 [Service Date:
07/31/2020] Length of Brief: 5498. [20-5204,
20-5205, 20-5209] (Wilson, Rollie) [Entered:
07/31/2020 04:57 PM]

* * * * *

7/31/20 APPELLANT BRIEF [1854684] filed by Akiak
Native Community, Aleut Community of St.
Paul Island, Asa'carsarmiut Tribe, Confeder-
ated Tribes of the Chehalis Reservation, Elk
Valley Rancheria, California, Houlton Band of
Maliseet Indians, Navajo Nation, Pueblo of Pic-
uris, Quinault Indian Nation, San Carlos
Apache Tribe and Tulalip Tribes in 20-5205
[Service Date: 07/31/2020] Length of Brief:
7418 words. [20-5204, 20-5205, 20-5209]
(Kanji, Riyaz) [Entered: 07/31/2020 11:47 PM]

DATE PROCEEDINGS

8/3/20 APPENDIX [1854859] filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes in 20-5205. [Volumes: 1] [Service Date: 07/31/2020] [20-5204, 20-5205, 20-5209] (Kanji, Riyaz) [Entered: 08/03/2020 07:13 PM]

* * * * *

8/11/20 CORRECTED APPELLANT BRIEF f [1856064] filed by Arctic Village Council, Cheyenne River Sioux Tribe, Native Village of Venetie Tribal Government, Navajo Nation, Nondalton Tribal Council, Rosebud Sioux Tribe and Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5204, Arctic Village Council, Cheyenne River Sioux Tribe, Native Village of Venetie Tribal Government, Nondalton Tribal Council, Rosebud Sioux Tribe, Ute Tribe of the Uintah and Ouray Indian Reservation and Navajo Nation in 20-5205, Arctic Village Council, Cheyenne River Sioux Tribe, Native Village of Venetie Tribal Government, Nondalton Tribal Council, Rosebud Sioux Tribe and Navajo Nation and Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5209 [Service Date: 08/11/2020] [20-5204, 20-5205, 20-5209]—

DATE PROCEEDINGS

[MODIFIED EVENT—Edited 08/12/2020 by LMC] (Rasmussen, Jeffrey) [Entered: 08/11/2020 01:47 PM]

* * * * *

8/18/20 APPELLEE BRIEF [1857150] filed by Steven T. Mnuchin in 20-5204, 20-5205, 20-5209 [Service Date: 08/18/2020] Length of Brief: 12,637 Words. [20-5204, 20-5205, 20-5209] (Jed, Adam) [Entered: 08/18/2020 06:11 PM]

8/18/20 APPELLEE BRIEF [1857152] filed by Alaska Native Village Corporation Association, Inc., Association of ANCSA Regional Corporation Presidents/CEO's, Inc., Ahtna, Inc., Akiachak, Limited, Calista Corporation, Kwethluk, Incorporated, Napaskiak, Incorporated, Sea Lion Corporation and St. Mary's Native Corporation in 20-5204, 20-5205, 20-5209 [Service Date: 08/18/2020] Length of Brief: 9088 words. [20-5204, 20-5205, 20-5209] (Clement, Paul) [Entered: 08/18/2020 06:31 PM]

* * * * *

8/26/20 APPELLANT REPLY BRIEF [1858436] filed by Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5204, Navajo Nation in 20-5205, Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Native Village of Venetie Tribal Government, Nondalton Tribal Council and Arctic Village Council in 20-5209 [Service Date: 08/26/2020] Length of Brief: 2933 words.

DATE PROCEEDINGS

[20-5204, 20-5205, 20-5209] (Rasmussen, Jeffrey) [Entered: 08/26/2020 03:00 PM]

* * * * *

8/26/20 APPELLANT REPLY BRIEF [1858514] filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes in 20-5205 [Service Date: 08/26/2020] Length of Brief: 3567. [20-5204, 20-5205, 20-5209] (Kanji, Riyaz) [Entered: 08/26/2020 11:57 PM]

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9/11/20 ORAL ARGUMENT HELD before Judges Henderson, Millett and Katsas. [20-5204, 20-5205, 20-5209] [Entered: 09/13/2020 10:24 AM]

9/14/20 PER CURIAM ORDER [1861346] filed, on the court's own motion, that the Secretary of the Treasury be enjoined from disbursing or otherwise paying Title V funds to any Alaska Native regional or village corporations pending resolution of these consolidated appeals. Before Judges: Henderson, Millett and Katsas. [20-5204, 20-5205, 20-5209] [Entered: 09/14/2020 04:24 PM]

DATE PROCEEDINGS

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- 9/25/20 PER CURIAM JUDGMENT [1863445] filed that the judgment of the District Court appealed from in these causes granting summary judgment to the government and the intervenors and denying summary judgment to the plaintiff tribes is hereby reversed for the reasons in the accompanying opinion. Before Judges: Henderson, Millett and Katsas. [20-5204, 20-5205, 20-5209] [Entered: 09/25/2020 02:02 PM]
- 9/25/20 OPINION [1863446] filed (Pages: 24) for the Court by Judge Katsas, CONCURRING OPINION (Pages: 2) by Judge Henderson [20-5204, 20-5205, 20-5209] [Entered: 09/25/2020 02:05 PM]

* * * * *

- 9/29/20 MOTION [1864008] Emergency Motion to Suspend Statutory Lapse of Appropriation and Extend Budget Authority filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes in 20-5204, 20-5205, 20-5209 (Service Date: 09/29/2020 by CM/ECF NDA) Length Certification: 2993.

DATE PROCEEDINGS

- [20-5204, 20-5205, 20-5209] (Kanji, Riyaz) [Entered: 09/29/2020 05:39 PM]
- 9/29/20 PER CURIAM ORDER [1864017] filed upon consideration of the emergency motion of the Confederated Tribes of the Chehalis Reservation, et al., to suspend statutory lapse of appropriation and extend budget authority, it is ORDERED, on the court's own motion, that the government and the intervenor-appellees each file a response by 12:00 noon on Wednesday, September 30, 2020. Any reply is due by 3:00 p.m. on September 30, 2020. Before Judges: Henderson, Millett and Katsas. [20-5204, 20-5205, 20-5209] [Entered: 09/29/2020 06:45 PM]
- 9/30/20 RESPONSE IN OPPOSITION [1864090] to motion for other relief [1864008-2] filed by Steven T. Mnuchin in 20-5204, 20-5205, 20-5209 [Service Date: 09/30/2020 by CM/ECF NDA] Length Certification: 1386 words. [20-5204, 20-5205, 20-5209] (Jed, Adam) [Entered: 09/30/2020 11:57 AM]
- 9/30/20 RESPONSE [1864093] to order [1864017-2] filed by Alaska Native Village Corporation Association, Inc., Association of ANCSA Regional Corporation Presidents/CEO's, Inc., Ahtna, Inc., Akiachak, Limited, Calista Corporation, Kwethluk, Incorporated, Napaskiak, Incorporated, Sea Lion Corporation and St. Mary's Native Corporation in 20-5204, 20-5205, 20-5209 (Service Date: 09/30/2020 by CM/ECF NDA)

DATE PROCEEDINGS

- Length Certification: 2,003 words. [20-5204, 20-5205, 20-5209] (Clement, Paul) [Entered: 09/30/2020 11:59 AM]
- 9/30/20 REPLY [1864150] filed by Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5204 to response [1864090-2] [Service Date: 09/30/2020 by CM/ECF NDA] Length Certification: 307. [20-5204, 20-5209, 20-5205] (Rasmussen, Jeffrey) [Entered: 09/30/2020 02:44 PM]
- 9/30/20 REPLY [1864151] filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes in 20-5204, 20-5205, 20-5209 to response [~~1864090-2~~], [~~1864093-2~~] [Service Date: 09/30/2020 by CM/ECF NDA] Length Certification: 590. [20-5204, 20-5205, 20-5209] (Kanji, Riyaz) [Entered: 09/30/2020 02:53 PM]
- 9/30/20 PER CURIAM ORDER [1864207] filed ORDERED that to ensure an opportunity for orderly review of this Court's September 25, 2020 decision, as well as the government's ability to disburse the disputed funds upon completion of the litigation, any expiration of the appropriation for Tribal governments set forth in 42 U.S.C. 801(a)(2)(B) is hereby suspended. It is

DATE PROCEEDINGS

FURTHER ORDERED that this order will expire at 5:00 p.m. on October 30, 2020, unless the federal government or the intervenor-appellees has by then filed either a petition for rehearing en banc or for a writ of certiorari seeking review of this Court's decision, in which case this order will remain effective until seven days after final action by this Court or the Supreme Court. Before Judges: Henderson, Millett and Katsas. (*Circuit Judge Henderson would deny the motion) [20-5204, 20-5205, 20-5209] [Entered: 09/30/2020 05:31 PM]

* * * * *

- 12/7/20 MOTION [1874743] to issue mandate, and to promptly comply with the mandate filed by Ute Tribe of the Uintah and Ouray Indian Reservation (Service Date: 12/07/2020 by CM/ECF NDA) Length Certification: 1113 words. [20-5204]—[Edited 12/21/2020 by DJR—MODIFIED EVENT] (Rasmussen, Jeffrey) [Entered: 12/07/2020 07:08 PM]
- 12/14/20 RESPONSE IN OPPOSITION [1875729] to motion to issue mandate [1874743-2] filed by Steven T. Mnuchin in 20-5204, 20-5209, 20-5205 [Service Date: 12/14/2020 by CM/ECF NDA] Length Certification: 1220 words. [20-5204, 20-5209, 20-5205] (Jed, Adam) [Entered: 12/14/2020 09:36 PM]
- 12/16/20 REPLY [1876059] filed by Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5204,

DATE PROCEEDINGS

- 20-5205, 20-5209 to response [[1875729-2](#)] [Service Date: 12/16/2020 by CM/ECF NDA] Length Certification: 1315. [20-5204, 20-5205, 20-5209] (Rasmussen, Jeffrey) [Entered: 12/16/2020 04:43 PM]
- 12/17/20 RESPONSE IN OPPOSITION [[1876226](#)] to motion to issue mandate [[1874743-2](#)] filed by Ahtna, Inc., Akiachak, Limited, Alaska Native Village Corporation Association, Inc., Association of ANCSA Regional Corporation Presidents/CEO's, Inc., Calista Corporation, Kwethluk, Incorporated, Napaskiak, Incorporated, Sea Lion Corporation and St. Mary's Native Corporation in 20-5205, 20-5204, 20-5209 [Service Date: 12/17/2020 by CM/ECF NDA] Length Certification: 935 Words. [20-5205, 20-5204, 20-5209] (Clement, Paul) [Entered: 12/17/2020 04:32 PM]
- 12/18/20 REPLY [[1876311](#)] filed by Ute Tribe of the Uintah and Ouray Indian Reservation in 20-5204 to response [[1876226-2](#)] [Service Date: 12/18/2020 by CM/ECF NDA] Length Certification: 187. [20-5204, 20-5205, 20-5209] (Rasmussen, Jeffrey) [Entered: 12/18/2020 11:31 AM]
- 12/21/20 PER CURIAM ORDER [[1876648](#)] filed that the motion be granted in part and denied in part. The motion to issue the mandate is hereby granted [[1874743-2](#)], and the Clerk is directed to issue the mandate forthwith. The motion for an order requiring the United States

DATE PROCEEDINGS

to promptly comply with the mandate is hereby denied [1874743-3]. Before Judges: Henderson, Millett and Katsas. [20-5204, 20-5205, 20-5209] [Entered: 12/21/2020 04:06 PM]

12/21/20 MANDATE ISSUED to Clerk, U.S. District Court. [20-5204, 20-5205, 20-5209] [Entered: 12/21/2020 04:07 PM]

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 20-5205

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION; TULALIP TRIBES; HOULTON BAND OF
MALISEET INDIANS; AKIAK NATIVE COMMUNITY;
ASA'CARSMIUT TRIBE; ALEUT COMMUNITY OF ST.
PAUL ISLAND; PUEBLO OF PICURIS; ELK VALLEY
RANCHERIA, CALIFORNIA; SAN CARLOS APACHE TRIBE;
QUINAUT INDIAN NATION; NAVAJO NATION,
PLAINTIFFS-APPELLANTS

CHEYENNE RIVER SIOUX TRIBE, 20-cv-01059;
OGLALA SIOUX TRIBE, 20-cv-01059; ROSEBUD SIOUX
TRIBE, 20-cv-01059; NONDALTON TRIBAL COUNCIL,
20-cv-01059; ARCTIC VILLAGE COUNCIL, 20-cv-01059;
NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT,
20-cv-01059; UTE TRIBE OF THE UINTAH AND OURAY
INDIAN RESERVATION, 20-cv-01070,
PLAINTIFFS-APPELLEES

v.

STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF U.S. DEPARTMENT OF THE TREASURY,
DEFENDANT-APPELLEE

AHTNA, INC.; ALASKA NATIVE VILLAGE CORPORATION
ASSOCIATION, INC.; ASSOCIATION OF ANCSA REGIONAL
CORPORATION PRESIDENTS/CEO'S, INC.; CALISTA
CORPORATION; KWETHLUK, INCORPORATED; SEA LION
CORPORATION; ST. MARY'S NATIVE CORPORATION;
NAPASKIAK, INCORPORATED; AKIACHAK, LIMITED,
INTERVENORS FOR DEFENDANT-APPELLEES

DOCKET ENTRIES

DATE	PROCEEDINGS
7/14/20	US CIVIL CASE docketed. [20-5205] [Entered: 07/14/2020 02:07 PM]
7/14/20	NOTICE OF APPEAL [1851588] seeking review of a decision by the U.S. District Court in 1:20-cv-01002-APM filed by Akiak Native Community, Aleut Community of St. Paul Island, Asa'carsarmiut Tribe, Confederated Tribes of the Chehalis Reservation, Elk Valley Rancheria, California, Houlton Band of Maliseet Indians, Navajo Nation, Pueblo of Picuris, Quinault Indian Nation, San Carlos Apache Tribe and Tulalip Tribes. Appeal assigned USCA Case Number: 20-5205. [20-5205] [Entered: 07/14/2020 02:08 PM]
7/14/20	CLERK'S ORDER [1851593] filed consolidating cases 20-5205 (Consolidation started 07/14/2020) with 20-5204. [20-5204, 20-5205] [Entered: 07/14/2020 02:11 PM]

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 20-5209

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION; TULALIP TRIBES; HOULTON BAND OF
MALISEET INDIANS; AKIAK NATIVE COMMUNITY;
ASA'CARSMIUT TRIBE; ALEUT COMMUNITY OF ST.
PAUL ISLAND; PUEBLO OF PICURIS; ELK VALLEY
RANCHERIA, CALIFORNIA; SAN CARLOS APACHE TRIBE;
QUINAUT INDIAN NATION; NAVAJO NATION; OGLALA
SIOUX TRIBE, 20-CV-01059; UTE TRIBE OF THE UINTAH
AND OURAY INDIAN RESERVATION, 20-CV-01070,
PLAINTIFFS-APPELLEES

CHEYENNE RIVER SIOUX TRIBE, 20-CV-01059; ROSEBUD
SIOUX TRIBE, 20-CV-01059; NONDALTON TRIBAL
COUNCIL, 20-CV-01059; ARCTIC VILLAGE COUNCIL,
20-CV-01059; NATIVE VILLAGE OF VENETIE TRIBAL
GOVERNMENT, 20-CV-01059, PLAINTIFFS-APPELLANTS

v.

STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF U.S. DEPARTMENT OF THE TREASURY,
DEFENDANT-APPELLEE

AHTNA, INC.; ALASKA NATIVE VILLAGE CORPORATION
ASSOCIATION, INC.; ASSOCIATION OF ANCSA REGIONAL
CORPORATION PRESIDENTS/CEO'S, INC.; CALISTA
CORPORATION; KWETHLUK, INCORPORATED; SEA LION
CORPORATION; ST. MARY'S NATIVE CORPORATION;
NAPASKIAK, INCORPORATED; AKIACHAK, LIMITED,
INTERVENORS FOR DEFENDANT-APPELLEES

DOCKET ENTRIES

DATE	PROCEEDINGS
7/15/20	US CIVIL CASE docketed. [20-5209] [Entered: 07/15/2020 12:09 PM]
7/15/20	NOTICE OF APPEAL [1851755] seeking review of a decision by the U.S. District Court in 1:20-cv-01002-APM filed by Arctic Village Council, Cheyenne River Sioux Tribe, Native Village of Venetie Tribal Government, Nondalton Tribal Council and Rosebud Sioux Tribe. Appeal assigned USCA Case Number: 20-5209. [20-5209] [Entered: 07/15/2020 12:12 PM]
7/15/20	CLERK'S ORDER [1851757] filed consolidating case 20-5209 (Consolidation started 07/15/2020) with 20-5204 [20-5204, 20-5205, 20-5209] [Entered: 07/15/2020 12:14 PM]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(WASHINGTON, DC)

Docket No. 1:20-cv-01002-APM
CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION, ET AL.

v.

MNUCHIN

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/17/20	<u>1</u>	COMPLAINT against STEVEN MNUCHIN <i>in his official capacity as Secretary of U.S. Department of the Treasury</i> (Filing fee \$ 400 receipt number BDCDC-7031496) filed by ALEUT COMMUNITY OF ST. PAUL ISLAND, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, AKIAK NATIVE COMMUNITY, HOULTON BAND OF MALISEET INDIANS, TULALIP TRIBES, ASA CARSARMIUT TRIBE. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons) (Kanji, Riyaz) (Entered: 04/17/2020)

DATE	DOCKET NUMBER	PROCEEDINGS
* * * * *		
4/20/20	<u>3</u>	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST. PAUL ISLAND, ASA CAR-SARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, HOULTON BAND OF MALISEET INDIANS, TULALIP TRIBES (Attachments: # <u>1</u> Declaration Akiak Native Community, # <u>2</u> Declaration Aleut Community of St, # <u>3</u> Declaration Asacarsarmiut, # <u>4</u> Declaration Chehalis—Pickernell, # <u>5</u> Declaration HBMI—Sabattis, # <u>6</u> Declaration Tulalip—Gobin, # <u>7</u> Text of Proposed Order, # <u>8</u> Declaration RAK Certificate of Counsel, # <u>9</u> Declaration RAK 2nd Decl) (Kanji, Riyaz). Added MOTION for Preliminary Injunction on 4/20/2020 (eg). (Entered: 04/20/2020)
* * * * *		
4/21/20	<u>7</u>	AMENDED COMPLAINT against STEVEN MNUCHIN filed by TULALIP TRIBES,

DATE	DOCKET NUMBER	PROCEEDINGS
		CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ALEUT COMMUNITY OF ST. PAUL ISLAND, HOULTON BAND OF MALISEET INDIANS, AKIAK NATIVE COMMUNITY, ASA CARSARMIUT TRIBE, PUEBLO OF PICURIS, ELK VALLEY RANCHERIA, CALIFORNIA, SAN CARLOS APACHE TRIBE, QUINAULT INDIAN NATION, NAVAJO NATION. (Kanji, Riyaz) (Entered: 04/21/2020)
		* * * * *
4/23/20	<u>21</u>	Memorandum in opposition to re <u>3</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by STEVEN MNUCHIN. (Lynch, Jason) (Entered: 04/23/2020)
		* * * * *
4/24/20	<u>30</u>	REPLY to opposition to motion re <u>3</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST.

DATE	DOCKET NUMBER	PROCEEDINGS
		PAUL ISLAND, ASA'CAR-SARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES. (Attachments: # <u>1</u> Declaration) (Kanji, Riyaz) (Entered: 04/24/2020)
		* * * * *
4/27/20	<u>35</u>	REPLY to opposition to motion re <u>3</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by UTE TRIBE OF THE UINTAH AND OURAY RESERVATION. (Rasmussen, Jeffrey) (Entered: 04/27/2020)
4/27/20	<u>36</u>	MEMORANDUM AND OPINION as to <u>3</u> Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. See attached Memorandum Opinion for further details. Signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
4/27/20	<u>37</u>	<p>Amit P. Mehta on 04/27/2020. (lcapm2) (Entered: 04/27/2020)</p> <p>ORDER. For the reasons stated in the <u>36</u> Memorandum Opinion, the court grants in part and denies in part Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. See attached Order for further details. Signed by Judge Amit P. Mehta on 04/27/2020. (lcapm2) (Entered: 04/27/2020)</p> <p>* * * * *</p>
4/30/20	<u>43</u>	<p>MOTION to Intervene by AHTNA, INC. (Attachments: # <u>1</u> Exhibit Declaration of Ken Johns, # <u>2</u> Exhibit Proposed Answer to Chehalis Plaintiffs' Complaint, # <u>3</u> Exhibit Proposed Answer to Sioux Plaintiffs' Complaint, # <u>4</u> Exhibit Proposed Answer to Ute Indian Tribe Complaint, # <u>5</u> Rule 26.1 Certificate, # <u>6</u> Text of Proposed Order) (O'Leary, Michael) (Entered: 04/30/2020)</p> <p>* * * * *</p>
5/5/20	<u>45</u>	<p>MOTION to Intervene <i>and Memorandum of Points and Authorities in Support</i> by Alaska Native</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		Village Corporation Association, Inc., Association of ANCSA Regional Corporation Presidents/CEO's, Inc. (Attachments: # <u>1</u> Declaration Aaron M. Schutt, # <u>2</u> Declaration Anthony Mallott, # <u>3</u> Declaration Richard Glenn, # <u>4</u> Declaration Shuana Z. Hegna, # <u>5</u> Declaration Sherri Buretta, # <u>6</u> Declaration Sophie Minich, # <u>7</u> Declaration Wayne Westlake, # <u>8</u> Declaration Nancy Andrew, # <u>9</u> Declaration Alfred Thomas Harris, # <u>10</u> Declaration Clifford Blair, # <u>11</u> Declaration Dean Gould, # <u>12</u> Declaration Ed Herndon, # <u>13</u> Declaration Janine Avner, # <u>14</u> Declaration Kenneth A. Hughes IV, # <u>15</u> Declaration Leo Barlow, # <u>16</u> Declaration Melissa M. Kookesh, # <u>17</u> Declaration Michele Christiansen, # <u>18</u> Declaration Patrick McCarty, # <u>19</u> Declaration Robert D. Mills, # <u>20</u> Declaration Ron Philemonoff, # <u>21</u> Declaration Thomas Kirk, # <u>22</u> Declaration Gail Schubert, # <u>23</u> Declaration Thomas Mack, # <u>24</u> Declaration George Sam, # <u>25</u> Exhibit Ex. 25—Proposed Answer to Chehalis Complaint, # <u>26</u> Exhibit Ex. 26—

DATE	DOCKET NUMBER	PROCEEDINGS
5/5/20	<u>46</u>	<p>Proposed Answer to Cheyenne River Complaint, # <u>27</u> Exhibit Ex. 27—Proposed Answer to Ute Tribe Complaint, # <u>28</u> ANVCA Rule 26.1 Disclosure, # <u>29</u> ARA Rule 26.1 Disclosure, # <u>30</u> Text of Proposed Order) (Wolff, Daniel) (Entered: 05/05/2020)</p> <p>MOTION to Intervene by CALISTA CORPORATION, Kwethluk, Incorporated, Sea Lion Corporation, St. Marys Native Corporation, Napaskiak, Incorporated, Akiachak, Limited (Attachments: # <u>1</u> Exhibit A—Declaration of A. Guy, # <u>2</u> Exhibit B—Declaration of G. Guy, # <u>3</u> Exhibit C—Declaration of N. Andrew, # <u>4</u> Exhibit D—Declaration of M. Naneng, # <u>5</u> Exhibit E—Declaration of M. Kaganak, # <u>6</u> Exhibit F—Declaration of J. George, # <u>7</u> Exhibit G—Proposed Answer to Chehalis Plaintiffs' Complaint, # <u>8</u> Exhibit H—Proposed Answer to Sioux Plaintiffs' Complaint, # <u>9</u> Exhibit I—Proposed Answer to Ute Indian Tribe Complaint, # <u>10</u> Rule 26.1 Certificate, # <u>11</u> Text of Proposed Order) (Naresh, Ragan) (Entered: 05/05/2020)</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
5/14/20	<u>59</u>	Memorandum in opposition re <u>46</u> MOTION to Intervene, <u>43</u> MOTION to Intervene, <u>45</u> MOTION to Intervene <i>and Memorandum of Points and Authorities in Support</i> filed by UTE TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION. (Rasmussen, Jeffrey) Modified on docket event/text 5/15/2020 (eg). (Entered: 05/15/2020)
		* * * * *
5/19/20	<u>62</u>	REPLY to opposition to motion re <u>46</u> MOTION to Intervene filed by AKIACHAK, LIMITED, CALISTA CORPORATION, KWETHLUK, INCORPORATED, NAPASKIAK, INCORPORATED, SEA LION CORPORATION, ST. MARY'S NATIVE CORPORATION. (Clement, Paul) (Entered: 05/19/2020)
		* * * * *
5/19/20	<u>65</u>	REPLY to opposition to motion re <u>45</u> MOTION to Intervene <i>and Memorandum of Points and Authorities in Support</i> filed by ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION,

DATE	DOCKET NUMBER	PROCEEDINGS
		INC., ASSOCIATION OF ANCSA REGIONAL CORPORATION PRESIDENTS/CEO'S, INC.. (Wolff, Daniel) (Entered: 05/19/2020)
		* * * * *
5/19/20	<u>68</u>	REPLY to opposition to motion re <u>43</u> MOTION to Intervene filed by AHTNA, INC.. (O'Leary, Michael) (Entered: 05/19/2020)
		* * * * *
5/20/20	<u>70</u>	ORDER granting the Motions to Intervene, ECF Nos. <u>43</u> , <u>45</u> , and <u>46</u> . Plaintiff Ute Tribe's <u>69</u> Motion for Leave to File Surreply is denied as moot. See the attached Order for further details. Signed by Judge Amit P. Metha on 05/20/2020. (lcapm2) (Entered: 05/20/2020)
5/22/20	<u>71</u>	ADMINISTRATIVE RECORD <i>Index & Certification</i> by STEVEN MNUCHIN. (Attachments: # <u>1</u> Kowalski AR Certification) (Lynch, Jason) (Entered: 05/22/2020)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/29/20	<u>76</u>	Joint MOTION for Summary Judgment by ARTIC VILLAGE COUNCIL, CHEYENNE RIVER SIOUX TRIBE, NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, NAVAJO NATION, NONDALTON TRIBAL COUNCIL, OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, UTE TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Memorandum in Support, # <u>3</u> Declaration Frazier, # <u>4</u> Exhibit Frazier, # <u>5</u> Exhibit Frazier, # <u>6</u> Exhibit Frazier, # <u>7</u> Exhibit Frazier, # <u>8</u> Exhibit Frazier, # <u>9</u> Exhibit Frazier, # <u>10</u> Exhibit Frazier, # <u>11</u> Exhibit Frazier, # <u>12</u> Exhibit Frazier, # <u>13</u> Exhibit Frazier, # <u>14</u> Declaration Herman, # <u>15</u> Exhibit Herman, # <u>16</u> Exhibit Herman, # <u>17</u> Exhibit Herman, # <u>18</u> Exhibit Herman, # <u>19</u> Declaration Yatlin, # <u>20</u> Declaration Thumma, # <u>21</u> Exhibit Thumma, # <u>22</u> Declaration Alexie, # <u>23</u> Exhibit Alexie) (Ducheneaux, Nicole) (Entered: 05/29/2020)

DATE	DOCKET NUMBER	PROCEEDINGS
5/29/20	<u>77</u>	MOTION for Summary Judgment by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST. PAUL ISLAND, ASA'CARSARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order) (Kanji, Riyaz) (Entered: 05/29/2020)
5/29/20	<u>78</u>	MOTION for Summary Judgment by AHTNA, INC., AKIACHAK, LIMITED, ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC., ASSOCIATION OF ANCSA REGIONAL CORPORATION PRESIDENTS/CEO'S, INC., CALISTA CORPORATION, KWETHLUK, INCORPORATED, NAPASKIAK, INCORPORATED, SEA LION CORPORATION, ST. MARY'S

DATE	DOCKET NUMBER	PROCEEDINGS
5/29/20	<u>79</u>	<p>NATIVE CORPORATION (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration S. Minich Supp. Decl., # <u>3</u> Text of Proposed Order) (Wolff, Daniel) (Entered: 05/29/2020)</p> <p>MOTION for Summary Judgment by STEVEN MNUCHIN (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1—1977 Final Report, # <u>3</u> Text of Proposed Order) (Lynch, Jason) (Entered: 05/29/2020)</p>
6/9/20	<u>86</u>	<p>* * * * *</p> <p>RESPONSE re <u>76</u> Joint MOTION for Summary Judgment, <u>77</u> MOTION for Summary Judgment filed by AHTNA, INC., AKIACHAK, LIMITED, ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC., ASSOCIATION OF ANCSA REGIONAL CORPORATION PRESIDENTS/CEO'S, INC., CALISTA CORPORATION, KWETHLUK, INCORPORATED, NAPASKIAK, INCORPORATED, SEA LION CORPORATION, ST. MARY'S NATIVE CORPORATION. (Attach-</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		ments: # <u>1</u> Declaration S. Burretta Supp. Decl.) (Wolff, Daniel) (Entered: 06/09/2020)
6/9/20	<u>87</u>	RESPONSE re <u>79</u> MOTION for Summary Judgment, <u>78</u> MOTION for Summary Judgment, <u>77</u> MOTION for Summary Judgment filed by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST. PAUL ISLAND, ASA'CARSARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES. (Kanji, Riyaz) (Entered: 06/09/2020)
6/9/20	<u>88</u>	RESPONSE re <u>76</u> Joint MOTION for Summary Judgment, <u>77</u> MOTION for Summary Judgment filed by STEVEN MNUCHIN. (Lynch, Jason) (Entered: 06/09/2020)

DATE	DOCKET NUMBER	PROCEEDINGS
6/9/20	<u>89</u>	RESPONSE re <u>79</u> MOTION for Summary Judgment, <u>78</u> MOTION for Summary Judgment, <u>76</u> Joint MOTION for Summary Judgment <i>Response/Reply in Support of Joint Motion for Summary Judgment</i> filed by ARTIC VILLAGE COUNCIL, CHEYENNE RIVER SIOUX TRIBE, NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, NAVAJO NATION, NONDALTON TRIBAL COUNCIL, OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, UTE TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION. (Furlong, Wesley) (Entered: 06/09/2020)
6/10/20	<u>90</u>	JOINT APPENDIX by AKIAK NATIVE COMMUNITY, ALUT COMMUNITY OF ST. PAUL ISLAND, ASA'CARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN

DATE	DOCKET NUMBER	PROCEEDINGS
		NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES. (Attachments: # <u>1</u> Appendix) (Kanji, Riyaz) (En- tered: 06/10/2020)
		* * * * *
6/17/20	<u>93</u>	Second AMENDED COM- PLAINT against STEVEN MNUCHIN filed by PUEBLO OF PICURIS, SAN CARLOS APACHE TRIBE, TULALIP TRIBES, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, NAVAJO NA- TION, ELK VALLEY RANCHE- RIA, CALIFORNIA, ALEUT COMMUNITY OF ST. PAUL IS- LAND, HOULTON BAND OF MALISEET INDIANS, AKIAK NATIVE COMMUNITY, QUINAULT INDIAN NATION, ASA'CARSARMIUT TRIBE. (eg) (Entered: 06/17/2020)
		* * * * *
6/25/20	<u>96</u>	Second AMENDED COM- PLAINT against STEVEN MNUCHIN filed by ARTIC VIL- LAGE COUNCIL, OGLALA

DATE	DOCKET NUMBER	PROCEEDINGS
		<p> SIOUX TRIBE, NATIVE VIL- LAGE OF VENETIE TRIBAL GOVERNMENT, NONDALTON TRIBAL COUNCIL, ROSEBUD SIOUX TRIBE, CHEYENNE RIVER SIOUX TRIBE. (eg) (Entered: 06/26/2020) </p>
6/26/20	<u>97</u>	<p> MEMORANDUM OPINION granting the Secretary's and Defendant-Intervenors' Motions for Summary Judgment, ECF Nos. <u>79</u> and <u>78</u>, and denying Plain- tiffs' Motions for Summary Judg- ment, ECF Nos. <u>76</u> and <u>77</u>. See the attached Memorandum Opin- ion for further details. Signed by Judge Amit P. Mehta on 06/26/2020. (lcapm2) (Entered: 06/26/2020) </p>
6/26/20	<u>98</u>	<p> ORDER. For the reasons set forth in the <u>97</u> Memorandum Opinion, the court grants <u>79</u> the Secretary's and <u>78</u> Defendant-Intervenors' Motions for Summary Judgment, and enters judgment in favor of Defendants in each of the consoli- dated cases. The preliminary in- junction entered on April 27, 2020, ECF No. <u>37</u>, is hereby dissolved. See the attached Order for further details. Signed by Judge Amit P. </p>

DATE	DOCKET NUMBER	PROCEEDINGS
6/29/20	<u>99</u>	<p>Mehta on 06/26/2020. (lcapm2) (Entered: 06/26/2020)</p> <p>MOTION for Leave to File <i>Injunction Pending Appeal</i> by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST. PAUL ISLAND, ASA'CAR-SARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES (Attachments: # <u>1</u> Text of Proposed Order) (Kanji, Riyaz) (Entered: 06/29/2020)</p> <p>* * * * *</p>
7/1/20	<u>100</u>	<p>MOTION for Joinder by UTE TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> (Rasmussen, Jeffrey) Modified docket event/text on 7/2/2020 (eg). (Entered: 07/01/2020)</p>

DOCKET		
DATE	NUMBER	PROCEEDINGS
* * * * *		
7/1/20	<u>102</u>	RESPONSE re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> filed by AKIACHAK, LIMITED, CALISTA CORPORATION, KWETHLUK, INCORPORATED, NAPASKIAK, INCORPORATED, SEA LION CORPORATION, ST. MARY'S NATIVE CORPORATION. (Clement, Paul) (Entered: 07/01/2020)
7/1/20	<u>103</u>	RESPONSE re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> filed by STEVEN MNUCHIN. (Lynch, Jason) (Entered: 07/01/2020)
7/1/20	<u>104</u>	RESPONSE re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> filed by ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC., ASSOCIATION OF ANCSA REGIONAL CORPORATION PRESIDENTS/CEO'S, INC.. (Wolff, Daniel) (Entered: 07/01/2020)
7/1/20	<u>105</u>	RESPONSE re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> filed by AHTNA, INC..

DATE	DOCKET NUMBER	PROCEEDINGS
7/3/20	<u>106</u>	<p>(Attachments: # <u>1</u> Exhibit Declaration of Ken Johns) (O'Leary, Michael) (Entered: 07/01/2020)</p> <p>RESPONSE re <u>99</u> MOTION for Leave to File <i>Injunction Pending Appeal</i> filed by AKIAK NATIVE COMMUNITY, ALEUT COMMUNITY OF ST. PAUL ISLAND, ASA'CARSARMIUT TRIBE, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDIANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES. (Kanji, Riyaz) (Entered: 07/03/2020)</p>
7/7/20	<u>107</u>	<p>MEMORANDUM OPINION AND ORDER granting <u>99</u> Confederated Tribes Plaintiffs' Motion for Injunction Pending Appeal. The court's Order of June 26, 2020, ECF No. 98, is hereby stayed until the earlier of September 15, 2020, or resolution of this matter by a three-judge panel of the D.C. Cir-</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>cuit, so long as Plaintiffs file a notice of appeal and seek expedited review by July 14, 2020. See the attached Memorandum Opinion for further details. Signed by Judge Amit P. Mehta on 07/07/2020. (lcapm2) Modified on 7/7/2020 (lcapm2). (Entered: 07/07/2020)</p> <p>* * * * *</p>
7/13/20	<u>111</u>	<p>NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>98</u> Order, <u>97</u> Memorandum & Opinion, by UTE TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION. Filing fee \$ 505, receipt number ADCDC-7333262. Fee Status: Fee Paid. Parties have been notified. (Rasmussen, Jeffrey) (Entered: 07/13/2020)</p> <p>* * * * *</p>
7/14/20	<u>113</u>	<p>NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>97</u> Memorandum & Opinion, by AKIAK NATIVE COMMUNITY, ALIUT COMMUNITY OF ST. PAUL ISLAND, ASA'CAR-SARMIUT TRIBE, CONFEDERATED TRIBES OF THE</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		CHEHALIS RESERVATION, ELK VALLEY RANCHERIA, CALIFORNIA, HOULTON BAND OF MALISEET INDI- ANS, NAVAJO NATION, PUEBLO OF PICURIS, QUINAULT INDIAN NATION, SAN CARLOS APACHE TRIBE, TULALIP TRIBES. Filing fee \$505, receipt number ADCDC- 7336116. Fee Status: Fee Paid. Parties have been notified. (Kanji, Riyaz) (Entered: 07/14/2020)
		* * * * *
7/14/20	<u>116</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT by CHEY- ENNE RIVER SIOUX TRIBE. Filing fee \$ 505, receipt number ADCDC-7338328. Fee Status: Fee Paid. Parties have been noti- fied. (Ducheneaux, Nicole) (En- tered: 07/14/2020)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(WASHINGTON, DC)

Docket No. 1:20-cv-01059-APM
CHEYENNE RIVER SIOUX TRIBE, ET AL.

v.

MNUCHIN

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/22/20	<u>1</u>	COMPLAINT against STEVEN MNUCHIN (Filing fee \$400 receipt number ADCDC-7048357) filed by CHEYENNE RIVER SIOUX TRIBE, ROSEBUD SIOUX TRIBE, OGLALA SIOUX TRIBE. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons) (Ducheneaux, Nicole) (Entered: 04/22/2020)
		* * * * *
4/22/20	<u>4</u>	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by CHEYENNE RIVER SIOUX TRIBE, OGLALA SIOUX TRIBE, ROSE-

DATE	DOCKET NUMBER	PROCEEDINGS
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BUD SIOUX TRIBE (Attachments: # 1 Declaration, # 2 Declaration, # 3 Declaration, # 4 Declaration, # 5 Text of Proposed Order) (Ducheneaux, Nicole) (Entered: 04/22/2020)

* * * * *

4/23/20

MINUTE ORDER. Because this matter involves common questions of law and fact as Confederated Tribes of the Chehalis Reservation v. Mnuchin, 20-cv-1002, the court on its own motion consolidates this case with the Confederated Tribes action. Fed. R. Civ. P. 42(a). The same scheduling order entered in the Confederated Tribes action shall apply to the motion for injunctive relief pending in this case, and Defendant may file a consolidated opposition to both motions for injunctive relief. The Cheyenne River Sioux Tribe Plaintiffs shall file their reply by noon on April 24, 2020, on the Confederated Tribes docket. A hearing on the Cheyenne River Sioux Tribe Plaintiffs' motion shall be consolidated with the hearing on the Confederated Tribes' motion. Signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
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Amit P. Mehta on 04/23/2020.
(lcapm2) (Entered: 04/23/2020)

* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(WASHINGTON, DC)

Docket No. 1:20-cv-01070-APM

UTE TRIBE OF THE UINTAH AND OURAY INDIAN
RESERVATION

v.

MNUCHIN

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/23/20	<u>1</u>	COMPLAINT against STEVEN MNUCHIN, <i>Secretary, United States Department of the Treasury</i> , (Filing fee \$ 400 receipt number ADCDC-7053084) filed by UTE TRIBE OF THE UINTAH AND OURAY RESERVATION. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Notice to Counsel/Party Notice of Related Cases, # <u>3</u> Summons Stephen Mnuchin) (Wilson, Rollie) (Entered: 04/23/2020)
		* * * * *
4/23/20	<u>5</u>	MOTION for Temporary Restraining Order MOTION for Preliminary Injunction by UTE

DATE	DOCKET NUMBER	PROCEEDINGS
4/23/20	<u>6</u>	<p>TRIBE OF THE UINTAH AND OURAY RESERVATION (Attachments: # <u>1</u> Declaration Luke Duncan) (Wilson, Rollie). Added MOTION for Preliminary Injunction on 4/24/2020 (eg). (Entered: 04/23/2020)</p> <p>MOTION to Consolidate Cases <i>and/or Join</i> by UTE TRIBE OF THE UINTAH AND OURAY RESERVATION (Wilson, Rollie) (Entered: 04/23/2020)</p>
4/24/20		<p>* * * * *</p> <p>MINUTE ORDER granting <u>6</u> Motion to Consolidate Cases. All future filings shall be made on the docket of Confederated Tribes of the Chehalis Reservation v. Munchin, 1:20-cv-1002 (APM). Signed by Judge Amit P. Mehta on 04/24/2020. (lcapm2) (Entered: 04/24/2020)</p> <p>* * * * *</p>



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MEMORANDUM

[MAY 21, 1976]

To: Commissioner of Indian Affairs
From: Assistant Solicitor for Indian Affairs
Subject: Meaning of "Indian tribe" in section 4(b) of
P.L. 93-638 for purposes of application to
Alaska

In your memorandum of April 15, 1976, you have asked for our opinion on two related questions concerning implementation of Title I of Public Law 93-638, the Indian Self-Determination Act. You first ask whether a resolution from a Native village council, a village corporation, or a regional corporation will suffice as a request to contract under the Act. You also ask whether village and regional corporations are within the scope of the Act. Since the second question largely embraces the first, we shall address it at the outset.

Section 4(b) of the Act provides:

“‘Indian tribe’ means 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 (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. . . . ”

Since both regional and village corporations find express mention in the definition, customary rules of statutory construction would indicate that they should be regarded as Indian tribes for purposes of application of this Act. However, you are troubled by the qualifying language: “. . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. . . .” Indeed, profit-making regional and village corporations have not heretofore been recognized as eligible for BIA programs and services which are not provided for by the terms of the Settlement Act. But if the quoted language operates to disqualify them from the benefits of P.L. 93-638, then their very mention in section 4(b) is superfluous. Therefore, we think the better view is that Congress intended the qualifying language not to apply to regional and village corporations but to pertain only to that part of the paragraph which comes before the word “including.” Accordingly, regional and village corporations are within the scope of the Act.

It follows that regional and village corporations may request to contract for the provision of BIA services under section 102 of the Act, and that they may also request grants under section 104. Such requests should be made by a resolution of a corporation’s board of directors, which is its “governing body” for purposes of application of 25 CFR §§ 271.18 and 272.11. Alaska Native villages are also considered Indian tribes under the Act, and their governing bodies may also request to contract and receive grants. If, as suggested in your memorandum, the Bureau receives competing requests from villages, village corporations, and regional corporations

for grants to serve the same clientele, then a determination must be made as to which potential grantee will put these funds to best use. After all, receipt of such grants is not a matter of right, but is based on the availability of appropriations. 25 CFR § 272.17(c). And if there are competing requests to contract, declination of a request may certainly be justified under the Act on the ground that competing contractors would not provide satisfactory services to the Indian beneficiaries.

A related problem, but one not mentioned in your memorandum, is that presented when a contract is let or a grant is made to a tribal organization to perform services benefitting more than one Indian tribe. The proviso in section 4(c) of the Act requires that the approval of each tribe benefitted must be obtained prior to the letting of the contract or the making of the grant. Section 271.18(a) of the regulations in turn provides that such approval must take the form of an authorizing resolution from each tribal governing body. However, it has been suggested that where regional corporations or other organizations representing more than one village or village corporation propose to contract or receive grants under the Act, resolutions from each village or village corporation to be served should not be required. In support of this suggestion it has been pointed out that the contracting tribal organization may itself be an Indian tribe (for example, in the case of a regional corporation) and that obtaining resolutions from numerous villages may be an onerous task.

Nonetheless, the language of the Act is unambiguous. If a contract or grant benefits more than one village or village corporation, the approval of each must be obtained. This is not to say, however, that any contract

with a regional corporation necessarily benefits every village or village corporation within its region. We can conceive of situations where a contract may be let to a regional tribal organization for purposes other than to provide direct benefits to certain villages or village corporations within the region. A determination must be made on a case-by-case basis whether or not an Indian tribe is actually benefitted within the meaning of the Act.

Indeed, it is not clear to us what it means for a contract to “benefit” a village corporation, as opposed to the Native village from which that corporation takes its stockholders. In some cases, the village may no longer have a governmental identity apart from the corporate structure. In other cases, a contract may be seen as providing services to individual village members without tangibly “benefitting” any particular village government or village corporation qua corporation. However, it does seem clear that if a contract is let to a regional tribal organization for the purpose of providing services in a given village, some governing body in that village must approve that contract. Whether it is the village corporation board of directors or the traditional village council which must give such approval—or both—depends on the circumstances in the given case. On this issue we understand that you will soon sign a memorandum to the Aberdeen Area Director which will provide some guidelines for determining when a contract or grant “benefits” an Indian tribe within the meaning of the Act.

We should also point out that the authorizing resolution required by the regulations is not a statutory requirement. The Act requires only the “approval” of the In-

dian tribe benefitted by the contract or grant. The Bureau in turn has implemented the statute by requiring resolutions from tribal governing bodies, and that is proper. However, if in a given situation the resolution procedure proves cumbersome, and a waiver of that procedure is found to be desirable as a matter of policy, we see no legal obstacle to such a waiver, as long as the tribe benefitted has had some opportunity to manifest its approval of the contract.

/s/ CHARLES M. SOLLER
CHARLES M. SOLLER

bcc: Secretary's files
Docket's files
DIA reading file
CMSoller's file
DRBarnes' file
TVollmann's file
JTalawyma's file

TVollmann:jt [5/21/76]



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
1849 C. Street N.W.
Washington, D.C. 20240

The Honorable Brian Callanan
General Counsel
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Callanan:

On April 20, 2020, the Department of the Treasury's Office of General Counsel requested the views of the Department of the Interior (Department) on whether Alaska Native Corporations (ANCs) are eligible for funding under Title V of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹ After a careful review of the statute and additional materials provided by my office, I can confirm that it is the Department's position that ANCs are eligible for such Funding.

The Indian Self Determination and Education Assistance Act (ISDEAA)² definition of "Indian tribe," incorporated by the CARES Act into Section 601 of the Social Security Act, explicitly includes "any Alaska Native village or regional or village corporation as defined in or es-

¹ Pub. L. No. 116-136.

² Pub. L. No. 93-638, codified as amended at 25 U.S.C. §§ 5301-5423.

established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).”³ As courts have held, it is unquestionable that such entities are “Indian tribes” for the specific purpose of ISDEAA eligibility.⁴ Thus, it is not necessary for ANCs to be considered “federally-recognized Indian tribes” in order to qualify as an “Indian tribe” under the ISDEAA.⁵

In light of ANCs’ status as “Indian tribes,” the question with regard to CARES Act eligibility is how the Act’s separate definitional requirement of being a “recognized governing body” of an “Indian tribe” affects ANCs. As courts have held, the “definition of an Indian tribe changes depending upon the purpose of the regulation or statutory provision under consideration.”⁶ The plain text of the CARES Act provides the most persuasive argument in favor of including ANCs as eligible for Section 601 funding. Under Section 601, a “Tribal government,” which is the “recognized governing body” of an “Indian tribe,” qualifies for funding. The phrase “recognized governing body” is not defined. However, the phrase “Indian tribe” clearly includes ANCs. Under this reading, the specific inclusion of ANCs as “Indian tribes”

³ 25 U.S.C. § 5304(e).

⁴ See, e.g., *Cook Inlet Native Ass’n v. Bowen*, 810 F.2d 1471, 1476 (9th Cir. 1987) (noting that “the plain language of the [ISDEAA] allows business corporations created under the [Alaska Native Claims Settlement Act] to be recognized as tribes” for ISDEAA purposes).

⁵ *Central Council of Tlingit and Haida Indian Tribes v. Chief Branch of Justice Svs., Bureau of Indian Affairs*, 26 IBIA 159 (1994); accord U.S. Dep’t of the Interior, Office of the Solicitor, Memorandum of Charles Soller, May 21, 1976.

⁶ *Dille v. Council of Energy Res. Tribes*, 801 F.2d 373, 376 (10th Cir. 1986).

should override any perceived ambiguity of the more general, undefined phrase of “recognized governing body” of an “Indian tribe.”⁷ That is, Section 601 demands including the ANC equivalent of a federally-recognized tribal government (most likely, a Board of Directors), within the definition of “recognized governing body” solely by virtue of ANC inclusion in the ISDEAA definition of “Indian tribe.”

A second argument in favor of including ANCs is supported by the significant body of case law concerning instances in which a tribal business, consortium, or agency constitutes a “tribe” for various statutory or common law purposes. The fact that Congress did not define the phrase “recognized governing body” can be read as an acknowledgment to this body of law and variance in practice across tribes. Rather than specify the precise contours of a “governing body” in a potentially underinclusive manner, Congress instead laid out the entities themselves that qualify as Indian tribes per the ISDEAA (federally-recognized Indian tribes and ANCs), and then included the more general caveat that Section 601 applicants must be the actual “governing body” of an ISDEAA “tribe.” The purpose of such phrasing would simply be to ensure that Section 601 applicants are the “tribal” bodies with whom the United States is entreating on a government-to-government basis (at least for ISDEAA purposes), regardless of formal title, as opposed to a subsidiary tribal business or government agency.

⁷ See, e.g., *RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (the “specific governs the general” in “statutes . . . in which a general authorization and a more limited, specific authorization exist side-by-side”).

Finally, Congress's ultimate goal in enacting Section 601 was to compensate for funds lost due to the coronavirus pandemic. ANCs act as economic vehicles in Alaska on behalf of their shareholders, the vast majority of which are members of federally-recognized Indian tribes. To the extent that Section 601 funding helped ensure ANC viability during the pandemic, the ultimate beneficiaries (at least in part) would be tribal members.

If you or your team have questions or require further assistance, please feel free to contact Kyle Scherer, Deputy Solicitor for Indian Affairs, at 202-740-0683 or me at 202-706-9018.

Sincerely,

/s/ DANIEL H. JORJANI
DANIEL H. JORJANI
Solicitor



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

[Apr. 23, 2020]

ACTION MEMORANDUM FOR SECRETARY MNUCHIN

SUBJECT: Treatment of Alaska Native Corporations
under the Title V of the CARES Act

FROM: Brian Callanan, General Counsel

Under section 601 of the Social Security Act (the “Act”), as added by Title V of the CARES Act,¹ the Secretary of the Treasury is required to make payment from the Coronavirus Relief Fund (the “Fund”) in the aggregate amount of \$8 billion to Tribal governments.²

The term “Tribal government” is defined in section 601(g)(5) of the Act as the recognized governing body of an Indian Tribe.³ Section 601(g)(1) of the Act in turn defines the term “Indian tribe” by reference to the Indian Self-Determination and Education Assistance Act, which is administered by the Secretary of the Interior and the Secretary of Health and Human Services.⁴ Section 601(c)(7) of the Act requires that the Secretary of the Treasury consult with the Secretary of the Interior regarding his determination of the amount to be paid to Tribal governments from the Fund.

¹ Pub. L. 116-136; 134 Stat. 281.

² 42 U.S.C. § 801(a)(2).

³ *Id.* at § 801(g)(5).

⁴ *Id.* at § 801(g)(1).

RECOMMENDATION

Based on the legal analysis provided by the Solicitor of the Department of the Interior (included as Attachment 1), with which I concur, I recommend that you determine that Alaska Native regional and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act,⁵ are eligible to receive payments from the Coronavirus Relief Fund in the amounts to be determined pursuant to section 601(c)(7) of the Social Security Act.

Approve **Disapprove** **Let's Discuss**

ATTACHMENT

1. Letter from the Solicitor of the Department of the Interior dated April 21, 2020.
2. Draft Website Press Release.

[FINAL DOCUMENT]

⁵ 43 U.S.C. § 1601 *et seq.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Health Services Administration

Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts

Notice is hereby given that the Indian Health Service (IHS) has adopted administrative guidelines governing tribal clearances of Indian Self-Determination Contracts in the Alaska Area. Publication as a notice was decided upon because of the large number of tribes affected, the wide geographical dispersal of the tribes and the key importance of the guidelines to the successful implementation of the Indian Self-Determination Act in Alaska. The guidelines have been developed in cooperation and consultation with the Alaska Tribes and tribal organizations.

The following administrative guidelines will also be incorporated into the administrative circular system of the Alaska Area Native Health Service (AANHS).

Alaska Area Native Health Service Circular

Administrative Guidelines: Tribal Clearances for Pub. L. 93-638 Contracts

Contents:

1. Purpose
2. Statutory Authority
3. Definitions
4. Requirements
 - A. Tribal Clearances—Initial Contracts
 - B. Contents of the Resolution
 - C. Absence of Resolutions
 - D. Tribal Clearances—Renewal Contracts

- E. Existing Resolution
- F. Adoption of Resolutions

- 5. Supercession
- 6. Attachments

1. Purpose

Public Law 93-638 (25 U.S.C. 450 et seq.) directs the Secretary of Health and Human Services, upon the request of any Indian tribe, to enter into a contract or contracts with duly authorized tribal organization or any Indian tribe to carry out any or all of his functions, authorities, and responsibilities.

The purpose of this circular is to set forth the policies and procedures for the tribal clearances necessary for Pub. L. 93-638 contracting in the Alaska Area. This circular is an interpretative supplement to and does not replace or change the existing regulations which govern contracting under Pub. L. 93-638.

2. Statutory Authority

A. The Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, 43 U.S.C. 1601-1628).

B. The Indian Self-Determination Act (Public Law 93-638, Section 103, 25 U.S.C. 450g).

C. The Code of Federal Regulations (CFR) Title 42, Sections 36.201-36.226.

3. Definitions

A. "Indian tribe" means 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, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

B. "Tribal organization" means the recognized governing body of any Indian tribe: or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Under this policy, for example, the tribal organization which contracts with the Indian Health Service (IHS) may be the regional non-profit corporation, or an independent organization of Indians established for the purpose of providing health care services, or the village governing body.

C. "Initial contract" means a contract application or proposal for any program or portion of a program authorized by the Secretary not presently being carried out by the tribal organization.

D. "Renewal contract" means an application for continuance of any program or portion of a program which is presently a part of an existing Pub. L. 93-638 contract.

E. “Modification Amendment” means any change in the cost, conditions, or scope of work for a program under contract.

F “Resolution” means a formal expression of opinion, will, or intent by the tribal governing body or by an official having legal authority to speak for the tribal governing body.

4. Requirements

A. *Tribal Clearances—Initial Contracts*

Any tribal organization is eligible to apply for contracts under the Indian Self-Determination Act (42 CFR 36.205(a)). However, before the IHS may enter into a contract with a tribal organization, it must be requested to do so by the tribe or tribes which will be benefited by the contract (42 CFR 35.206(a)). The tribe’s request shall be in the form of a resolution issued by the tribal governing body (See Section F below). If the tribal organization is applying for a contract benefitting more than one tribe, the approval of each tribal governing body must be obtained before submitting the application to AANHS (42 CFR 36.206(a)).

The tribal approval required before an IHS function can be contracted will vary depending upon the benefits provided by the contractor. Section 4(c) of the Indian Self-Determination Act requires “That in any case where a contract is let or a grant made to an organization to perform services benefitting more than one Indian tribe, *the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.*”

Villages, as the smallest tribal units under the ANCSA must approve contracts which will benefit their members. The actual benefit of proposed contracts for IHS functions accrues to residents of individual villages as recipients of the health services. The IHS has determined, therefore, that the statute requires village approval, either directly or by Delegation to a tribal organization.

In the case of a regional or sub-regional facility or service, resolutions are required from all of the Alaska Native villages in the local area that will use the facility or receive the service. In the case of the Alaska Native Medical Center (ANMC), which functions both as a local service unit facility as well as a referral center for patients throughout the State, the scope of village approval will vary depending upon the functions to be contracted. Service Unit functions need receive approval only from the villages in the Anchorage Service Unit. However, the ANMC also provides certain specialized health services and programs for all of the villages in the Alaska Area. Before these programs or portions of programs can be contracted, the contractor must show evidence of support for contracting from *each* village throughout the State. The support may be in the form of village resolutions or resolutions from tribal organizations which have been delegated the authority to approve contracting for statewide services by the villages. (See Section B for an explanation of delegation of authority for statewide functions.)

For the purposes of contracting under Pub. L. 93-638, the Alaska Area will recognize as the village governing body the following entities in order of precedence:

If there is an Indian Reorganization Act (IRA) Council, and it provides governmental functions for the village, it will be recognized.

If there is no IRA Council, or it does not provide governmental functions, then the traditional village council will be recognized.

If there is no IRA Council and no traditional village council, then the village profit corporation will be recognized.

If there is no IRA Council, no traditional village council, and no village profit corporation, then the regional profit corporation will be recognized for that particular village.

B. Contents of the Resolution

The resolution of the tribal governing body shall authorize the applicant tribal organization to apply for, negotiate and contract with the IHS (42 CFR 36.206(b) and (c)), subject to the terms of the resolution and any applicable tribal laws, codes, regulations and customs. The resolution must also include the following:

1. The name of the tribal organization to which the resolution is given, such as a particular regional health corporation;
2. The date the resolution was approved, and the signature of the person authorized to certify the accuracy of the information in the resolution; and
3. A statement of the scope of contracting authority. It is the administrative interpretation of the AANHS that the “specific terms, conditions, and limitation” of the resolution allow either a broad or narrow statement of contract scope, whichever the village desires.

Regulations at 42 CFR 36.206(a) allow a tribal organization to apply for and negotiate more than one contract pursuant to an authorizing resolution. Therefore, villages are encouraged by AANHS to adopt broad, flexible language for this statement.

Narrow Scope Resolution

If a village issues a resolution that is narrow in scope, the tribal organization must obtain additional resolutions specific to any other services it wishes to provide. Any proposed increase in the responsibility of the tribal organization is considered an “initial contract proposal” under this option. The benefit of a narrow resolution is that it vests continuing control over the tribal organization in the village by requiring affirmative action on the part of the village council before any expansion in services is possible. The disadvantage of a narrow resolution is that it greatly increases the paperwork and overhead involved in contracting under Pub. L. 93-638 for the tribal organization and discourages comprehensive regional planning. The village council is called upon repeatedly to issue nearly identical formal resolutions of support for the tribal organization, a difficult task where the villagers may be dispersed for several months each year. An example of a limited resolution is found at Attachment A.

Broad Scope Resolution

If a village provides a broad resolution of support for a tribal organization’s health care activities the organization can contract with the IHS to provide comprehensive services to the village. The advantages to this approach are reduction of the considerable administrative

costs associated with multiple resolutions, increased flexibility and expedited health planning. The disadvantage of the broad resolution is that if a village is dissatisfied with the tribal organization's performance, it is incumbent upon the village to express its dissatisfaction by issuing a resolution on its own initiative withdrawing its support of the organization or limiting the scope of services the organization can provide.

It is incumbent upon each village to choose the type of resolution that best meets its needs. This decision will be based upon many factors, including the competency and expertise in health matters of both the village and the tribal organization, and the ease with which the village could issue numerous resolutions which may be required throughout the year.

The village resolution in support of a tribal organization must also include:

The extent and procedure, if any, for village council review of the contract, and any resulting amendments thereto, prior to execution;

The village council official to whom AANHS should send correspondence and copies of contract documents;

The proposed term of the contracts and date of commencement. Many tribes leave the term of the contract open-ended in support of what are expected to be ongoing health services; and

Any other limitations the village may wish to impose on authorities granted in the resolution.

Delegation of Authority

The resolution may include at the option of the village a delegation of authority. The delegation of authority allows the tribal organization to issue resolutions on behalf of the village in support of Pub. L. 93-638 contracts for the functions listed in the resolution. These may include any health care services provided by the AANHS both locally and on a statewide basis. For example, all the villages in a region may authorize the regional health corporation to act on their behalf in requesting or approving contracts for any health care program run on a statewide basis such as a renal dialysis, burn care unit, or other specialized medical care. In that case, the regional health corporation would have the authority to issue a resolution of support to a third tribal organization or nonprofit Indian organization on behalf of member villages. Villages are encouraged by AANHS to adopt flexible delegation clauses for any health activities or services not provided locally. However, the village may allow the tribal organization to exercise only the authority that the village wishes to delegate. Sample delegation clauses, broad and narrow in scope, are found at, Attachments B and C.

C. Absence of Resolutions

In cases of original contracts and renewals where all of the village(s) to be served do not provide resolutions of support, the matter will be resolved by the AANHS Director. The Area Director, in conjunction with the Service Unit Director and program chiefs, will determine if the program is administratively divisible and if it is feasible to apportion the program or services to be delivered. Possible ways to apportion the program or services to be delivered include:

1. Contract with the tribal organization for service to the tribes supporting that tribal organization for one portion of the program, *and*

Contract *directly* with the tribe(s) that have objected to having the tribal organization contracts on their behalf, *or*

2. The objecting tribe(s) may nominate by resolution a second tribal organization to provide the divisible portion of the service; or

3. At his discretion, the Director may decide to contract with the tribal organization to provide service to those villages which support the contractor and to offer alternative arrangements for the services to the villages which object.

If an administrative determination is made by the AANHS that the program or service is not divisible and that no other arrangements are administratively feasible, then the tribal organization will not be allowed to contract to run the program. This is not a formal “declination” giving rise to the remedy of an administrative hearing, but a threshold question of organizational eligibility based on the statutory requirement that each village benefitting from the contract must approve the contract.

D. Tribal Clearances—Renewal Contracts

For renewal contracts a tribal organization must send a copy of the renewal application (or at a minimum an abstract of the complete scope of work) to the tribal governing body (council) of each village provided services under the existing contract, at least 75 calendar days before the existing contract expires (42 CFR 36.207(b)).

The copies should be sent by certified mail, return receipt requested. The tribal organization should inform the tribe that, if the council has no objection to the renewal, it need not take any action except to send the organization a notice of receipt. When the tribal organization submits its contract renewal application to IHS, verification of submission of the contract renewal application to the tribes served for their review will be required.

If the village council decides to object to the contract renewal application, it must pass a formal resolution to that effect and send it to the Area Director within 45 days after receiving the renewal contract. If no such resolution is received, the absence of a resolution shall constitute the village's acquiescence in renewal of the contract. If one or more of the tribal governing bodies involved object to the renewal, the contract will not be finalized until the tribal governing bodies have approved the request or the matter is otherwise resolved (42 CFR 36.207(b)).

E. Existing Resolutions

Existing resolutions will be considered valid evidence of support for existing Pub. L 93-638 contracts within tribal organizations.

However, when these contracts expire tribal organizations must acquire resolutions that are consistent with this circular. Tribal organizations contemplating expansion of services are encouraged by AANHS to obtain new village resolutions which are broader in scope, so that they will have the necessary resolutions prior to submitting contract proposals. This will enhance the tribal organization's ability to add and delete programs

or services as necessary under the broader authority delegated by member villages. An example of a village council broad resolution may be found at Attachment D.

F. Adoption of Resolutions

Regulations require that the tribe's request be in the form of a resolution by the tribal governing body (142 CFR 36.206(a)). However, the resolution may be adopted in whatever manner the tribal governing body chooses. It must be submitted to the AANHS as a written document, containing the date the resolution was approved and the signature of the person authorized to certify the accuracy of the information contained in the resolution. The document may be in the form of a letter. However, letters of support from individual tribal officials must show that the official is authorized under the bylaws of the tribe to act on its behalf. The letter can either relate to the adoption of a resolution by the tribal governing body or show that the individual has authority under tribal bylaws to represent tribal interests.

5. Supercession

None.

6. Attachments

A. Sample Resolution. (Narrow Scope)

——— Village Council Resolution No.

Whereas the ——— Tribal IRA Council is authorized under Public Law 93-638 to request the Indian Health Service to enter into contracts for programs benefitting Alaska Natives in the ——— Village: (Other phrases as deemed appropriate by the Village) NOW THEREFORE, be it resolved that:

The _____ Village Council hereby requests the Indian Health Service to enter into a contract with the _____ (tribal organization-regional health corporation) to conduct the following enumerated programs in the _____ Village:

Inpatient (Hospital) Care, Community Health Aide, Community Health Representative

Term

The proposed term of the contract is _____, and the proposed date for contract commencement is _____. The authority granted by this resolution shall remain in effect until the expiration of the contract.

Powers

The Executive Director of the _____ tribal organization is authorized to initiate all action necessary to conduct the programs including but not limited to: submitting the application, negotiating and signing the contract and any amendments thereto, on behalf of _____ Village Council, and delegated responsibility and authority for all of the day-to-day operation and direction of the programs.

B. Delegation of Authority: (Board)

The _____ Village delegates to the _____ Health Corporation the authority to issue resolutions of approval pursuant to the Indian Self-Determination Act to health care organizations or health care providers serving the State of Alaska to provide any of the services authorized by this resolution. This delegation means that the _____ Health Corporation may act on the behalf of the _____ Village to authorize regional health corporations

or other statewide organizations to provide services under Pub. L. 93-638 contract which benefit this village and all other Alaska Native Villages.

The authority granted by this resolution is effective immediately and remains in effect until withdrawn by the _____ Village IRA Council through issuance of a resolution of nonsupport.

Title _____

President _____

This resolution was adopted at a duly convened meeting of the _____ Village Council of the Community of _____ this _____ day of _____ 198 by a vote of _____ to _____.

Attest: _____

Secretary

C. Delegation of Authority (Narrow)

The authority of this resolution with respect to provision of Inpatient (Hospital) Care is delegated to the _____ tribal organization with powers of delegation of this authority by the contractor. The contractor may issue resolutions of support for the provision of the above-mentioned services by _____ (regional or statewide tribal organization) representing health concerns of the Native people in Alaska.

Title _____

President _____

The foregoing resolution was adopted at a duly convened meeting of the _____ (village council) of the Community of _____ this _____ day of _____ 198. By vote of _____ to _____.

Attest: _____

Secretary

D. Sample Resolution: (Broad Scope)

The _____ Village IRA Council hereby requests that the Indian Health Service enter into a contract with the _____ comprehensive health programs under contract with the IHS for the benefit of Alaska Natives in the _____ Village. The authority granted by the resolution gives the Regional Health Corporation the power to act on behalf of the _____ Village in all matters necessary for the provision of comprehensive health services to the _____ Village.

Powers

The Tribal organization is authorized to make arrangements to provide the following categories of services:

EXAMPLE I:

Core Clinical Services

Hospital (Inpatient) Care

Ambulatory Patient Care

Field Medical Services

Dental Care

Preventive Health Services

Mental Health Services

Alcoholism and Drug Abuse Services

Community Health Nursing

Health Education Programs

or

EXAMPLE II:

“Any and all health care currently being provided by the Indian Health Service, and any additional health care services that the organization can provide”.

Dated: May 8, 1981.

John H. Kelso,

Acting Administrator

[FR Doc 81-14804 Filed 5-15-81 8:45 am]

BILLING CODE 4118-84-M