



GREAT PLAINS TRIBAL CHAIRMEN'S ASSOCIATION, INC.

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

April 14, 2020

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

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

CC: Tara Sweeney
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Remove Tara Sweeney for Benefiting State-Chartered Alaska Native Corporations Above Federally-Recognized Tribal Governments and Promoting ANCSA Corporate Fee Lands Above Federally-Recognized Indian Country Lands in the Coronavirus Relief Fund

Dear Secretary Mnuchin and Secretary Bernhardt:

We write to request that you call upon President Trump to remove Tara Sweeney as Assistant Secretary for Indian Affairs. She has lost the confidence of Indian tribes. Charged with a large public trust, she unfairly sought to divert emergency Tribal Government resources to state-chartered, for-profit corporations owned by Alaska Native shareholders, including her and her family. Further, she seeks to deny the very existence of Indian country.

Alaska Natives know that the Alaska Native villages are tribal governments; state-chartered Alaska Native corporations (“ANCs”) are not. Alaska Native village leaders, tribal government leaders, often clash with the ANC Corporate leaders because the corporations do not provide revenues to the tribal governments. We see it at our national meetings.

Sweeney must be removed because she cannot be trusted to advise Treasury on Alaska Native Corporations under ANCSA when she is *clearly* an interested party—she’s a corporate shareholder and former Vice President of the Arctic Slope Regional Corporation. She is conflicted. Sweeney is *clearly* ready to disadvantage lower-48 Tribal Governments, if she can get away with it.

When Sweeney wanted her job, she said, “*For those who may fear that I am too Alaska-centric or I don’t have lower 48 experience, I want to dispel that myth,*” Sweeney testified. “*I am committed to working very hard for Indian Country ... and for Native self-determination, regardless of geography.*” Not true. She’s working to pull off a money grab for ANCs. When tribal leaders asked her about her ANC policy yesterday, she rudely cut-off the conversation because she does not want to answer any questions. She wants to rush the money out the door to her ANCs.

To put it in terms of “**geography**,” Sweeney is trying to slip in 45 Million acres of Alaska fee lands owned by ANC corporations, which are not Indian country. In contrast, in the lower-48 there are 55 Million acres of Indian country, and she is excluding Millions of acres of Indian reservation and allotted trust lands—turning the Supreme Court’s rulings on their head. Except to line ANC pockets, there is no sense to it.

To put it in terms of “**Indian country**,” Sweeney violated her pledge to serve Indian Country: (1) She plans to divert billions of dollars of Coronavirus Relief Funds to ANC for-profit state chartered corporations to the detriment of *real* Tribal Governments; (2) She wants to count Alaska Natives 3 times—as tribal members, Village Corporate shareholders, and Regional Corporate shareholders, including her and her family; and (3) Sweeney plans to count ANC fee lands as Indian lands, even though the Supreme Court ruled in *Alaska v. Native Village of Venetie*, 522 U.S. 502 (1998), that **ANCSA lands are not Indian lands!** At the same time, she disqualified *real* Indian country in the lower-48 states!¹

Our Indian nations are recognized as sovereigns in the Constitution’s Treaty Clause based upon the earliest treaties with the Delaware Nation, Iroquois Six Nations, the Cherokee Nation, the Creek and the Wyandott. Our Great Plains Indian nations were outside the original United States. In the 1803 Louisiana Purchase Treaty, America pledged to honor the existing treaties between Spain and Indian tribes, until the United States entered its own treaties based upon mutual consent. Our Indian nations fought for our freedom, liberty, and lands, and the United States sued for peace. In our 1868 Treaty, the United States pledged: “From this day forward all war between the parties to this agreement shall for ever cease. The government of the United States desires peace, and its honor is hereby pledged to keep it.” Our Indian nations reserved our right to self-government:

The pledge to secure to these people, with whom the United States was contracting as a distinct political body, an orderly government by appropriate legislation thereafter to be framed and enacted necessarily implies, having regard to all the circumstances attending

¹ The allocation criteria for the Coronavirus Relief Fund include ANCSA lands and lands owned by Indian Tribes and tribally-owned entities, but they ignore *all other lands within our Indian country*, including trust and restricted lands owned by individual Indians.

the transaction, that among the arts of civilized life which it was the very purpose of all these arrangements to introduce and naturalize among them was the highest and best of all -- that of self-government, the regulation by themselves of their own domestic affairs, the maintenance of order and peace among their own members by the administration of their own laws and customs.

Ex Parte Crow Dog, 109 U.S. 556, 568 (1883) (This is a Great Plains case from the Rosebud Sioux Tribe).

So, tribal membership is sacred to our Indian tribes because our tribal members are our tribal citizens—our Indian People, our Native children. We have a tribal governmental process similar to U.S. Citizenship for enrollment of tribal members.

In the U.S. Constitution, our tribal citizens are recognized as “Indians not taxed” in the original Apportionment Clause and again in the 14th Amendment. The Supreme Court explained the importance of this phrase, and of the exclusion of Indians from the citizenship clause in the 14th Amendment, in *Elk v. Wilkins*, 112 U.S. 94 (1884):

Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indiana tribes, (an alien though dependent power,) although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government....

(John Elk was a Nebraska Winnebago, and this is a Great Plains case). Indians, as tribal citizens, were not United States citizens by birth because our Native People owned our primary allegiance to our own Indian nations. In our treaties, the United States agreed that if we became citizens, our Indian people would retain our full treaty rights. Our treaty lands are reserved for our absolute and undisturbed use as our “permanent” home. ***Our reservations are sacred to us.***

Sweeney’s attempt to treat state corporate shareholders on the same basis as our tribal members, who are recognized in the Constitution as “Indians not taxed,” is a violation of our treaties, our rights to self-government. Tribal membership is citizenship, a political status that touches on liberty, not equivalent to shareholder status in a state corporation. Sweeney’s end run of Indian law is no small matter. ***She is violating our treaties to benefit her ANC Corporations.***

There are 13 Regional ANCs and over 200 Village ANCs. Alaska Natives 49 year old or older typically have shares in both a Regional Corporation and a Village Corporation. Many younger Alaska Natives have shares by bequest or transfer.

ANCs are for-profits incorporated under state law and the lands are fee lands subject to state jurisdiction and state taxing authority. To include these entities and these lands in the Coronavirus Relief Fund would strip hundreds of millions, if not billions, of dollars from federally-recognized Tribal governments with federally-recognized reservations in the lower 48 states of money we need to save our people from COVID-19.

In the Great Plains, we have the poorest counties in the Nation, and our people suffer from extreme poverty and the worst health conditions, so we find it particularly offensive for a Federal government official to stealthily divert Tribal Government funds meant to help Native People in a National Public Health Emergency to for-profit state-chartered ANC corporations.

To steer more money to ANCs, Sweeney plans to deny the very existence of Indian Country. She disregards Indian reservation lands and Indian trust allotments that are the very heart of Indian country. Title 18 U.S.C. sec. 1151, a cornerstone of Indian law, defines “Indian country” to mean:

“(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

The Supreme Court has repeatedly affirmed this law: All Indian reservation lands are Indian country, whether trust or fee land. *Solem v. Bartlett*, 465 U.S. 463 (1984) (a Great Plains case from Cheyenne River Sioux Reservation); *Nebraska v. Parker*, 136 S. Ct. 1072 (2016) (a Great Plains case from the Omaha Tribe affirming our reservation lands).

Just like Indian reservations, ***Indian trust allotments are Indian country***. When analyzing state and tribal governance vis-à-vis Indian trust allotments, in *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114 (1993), the Supreme Court said, “**we ask only whether the land is Indian country.**” *Id.* at 125. As the Supreme Court made abundantly clear, “Indian country” is the proper measure of tribal government jurisdiction and tribal governmental responsibility.

While federally recognized Alaska Native Villages are eligible to receive aid out of the Coronavirus Relief Fund, the statutory language of the CARES Act clearly excludes ANCs. Congress and Alaska Natives under ANCSA expressly rejected “ethnic institutions,” i.e., Tribal governments,² when they agreed to incorporate under state law with individual shareholders and subject their fee lands to taxation, and when they rejected the “reservation” system of the lower 48 states.³ Treasury must honor the statutory mandate of the CARES Act to distribute funds from the \$8 billion tribal government set-aside to federally recognized tribes. This statutory

² Indian nations and tribal governments are political bodies and although we consider the ANCSA statutory language pejorative, its meaning was clear: ANCs are not Tribal governments.

³ That’s one of the reasons the ANC fee lands are not Indian lands, not Indian country and not owned by a tribal entity. ANC lands are owned by the Corporations and through the Corporations, shareholders.

mandate excludes Alaska Native Corporations (“ANCs). The CARES Act requires Tribal Government recipients of Coronavirus Relief Funds to satisfy **two** definitions: (1) the definition of “Indian Tribe,” adopted from 25 U.S.C. § 5304(e); and (2) the definition of “Tribal government” in section 601(g) of the CARES Act. ANCs do not meet these definitions.

Under the second factor in section 5304(e), to be treated as “Indian tribes,” organizations must be “recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Under the Federally Recognized Tribe List Act, 25 U.S.C. § 5131, the Secretary publishes a list of Indian tribes, that is: “Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs;” 85 FR 5462-01 (Jan. 30, 2020). ANCs are not on the list of Federally recognized Indian tribes because they are not generally eligible for funding for self-government services.

As Tribal Governments on the Federal list, federally recognized Alaska Native Villages are eligible to receive aid out of the CARES Act Tribal Coronavirus Relief fund. In contrast, the statutory language of the CARES Act clearly excludes ANCs.

This statutory language is buttressed by the legislative record, which indicates that Congress’s intent was to direct Title V funds to entities providing *governmental services*. Title V funds must go to states, local governments, and tribal governments; not the ANC for-profit, state-chartered, individually owned shareholder corporations.

When asked about her decision to include ANCs in the \$8 billion Tribal government relief fund, on a call yesterday with Indian Tribal leaders, Sweeney said: “DOI and Indian Affairs will continue to follow the law as it is prescribed to us by Congress. It is not within our authority to decide definitions that are prescribed by Congress.” But, Sweeney is not following the law as prescribed by Congress; she is **deciding to ignore** it. ANCs are not “Indian tribes” or “Tribal governments” as defined in the CARES Act. They are not on Interior’s list of Indian Tribes “recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 5304(e).

The ANCs qualify for state corporation programs under the CARES Act. There was no reason for Sweeney to concoct this scheme. We can only assume that Treasury lacks the critical expertise to understand these Machiavellian ministrations.

Conclusion

Sweeney’s attempt to divert National Public Health Emergency Tribal Government Funds to ANC state chartered for-profit corporations is wrong. Her effort to bypass tribal consultation on this issue compounded the problem. Frankly, it was surreptitious, but even in the challenging times of COVID-19 such a large multi-billion scheme could not be accomplished without someone noticing.

Please call upon the White House to recall Sweeney to her former position working directly for ANCs. She cannot be permitted to continue working on their behalf in her federal post—violating her promises to recuse herself from matters involving ANCs, all while violating

her oath to uphold the United States Constitution and the legal treaty and trust obligations of the federal government to Indian tribal governments. Tribal Governments can no longer trust her as Assistant Secretary to serve Indian country.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Frazier". The signature is fluid and cursive, with a large initial "H" and a long, sweeping underline.

Harold Frazier, Chairman, Cheyenne River Sioux Tribe
Chairman, Great Plains Tribal Chairmen's Association