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April 2, 2020

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

Re: Recommendations for the Rapid Disbursement of COVID-19 Relief Funding and Resources to Tribal Nations

Dear Secretary Bernhardt:

On behalf of the undersigned American Indian and Alaska Native organizations, we write to request your urgent attention to matters delegated to you under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The recommendations outlined in this letter encompass critical funding and policy needs, with an emphasis on rapid deployment of vital resources, in order to help protect and prepare American Indian and Alaska Native communities to effectively respond to the current 2019 novel coronavirus (COVID-19) pandemic.

As the urgency, infection rate, and death toll of the COVID-19 pandemic intensifies, it has become increasingly clear that Indian Country needs significantly more resources as soon as possible to protect and preserve human life and address the grave economic impacts tribal nations face, as they close government operations and tribal enterprises to protect the health of their citizens and surrounding communities. American Indian and Alaska Native communities are disproportionately impacted by the health conditions that the Centers for Disease Control and Prevention (CDC) notes increase risk for a more serious COVID-19 illness, including respiratory illnesses, diabetes, and other health conditions.

We urge you to consider and adopt the following recommendations as you implement the authorities delegated to you under the CARES Act.

- **Facilitate maximum flexibility for the expeditious disbursement and implementation of Indian Country funds for addressing COVID-19 and its impacts.**

In this time of crisis, the federal government, including the Department of the Interior (DOI), must facilitate the most flexibility possible so that Indian Country is able to quickly receive federal funding and use that funding in the most effective way possible to combat COVID-19 and its impacts. Existing systems of service delivery and infrastructure will experience greater stress and/or reach their breaking points as tribal nations seek to maintain essential services, as well as dedicate resources to the unique circumstances of COVID-19 response. Failure to support tribal

discretion in use of funds and resources will be disastrous for tribal nations and Native people, as well as result in an incomplete response to this crisis, affecting the nation at-large.

The federal government has already taken steps to create flexibility in federal funding related to COVID-19. For example, on March 9, 2020, the Office of Management and Budget (OMB) released a memorandum identifying agency actions to relieve short term administrative, financial management, and audit regulatory requirements related to awards that support the continued research and services necessary to carry out the emergency response related to COVID-19.¹ The memorandum reduces administrative burdens on federal funding awardees and removes hurdles to receiving federal funds. On March 19, 2020, OMB expanded the scope of its earlier memorandum to also cover recipients affected by the loss of operational capacity and increased costs due to the COVID-19 crisis.² The requests contained in this letter are in this same spirit of flexibility to address COVID-19 and its impacts.

- **Ensure tribal nations' voices are meaningfully included in all decision making regarding addressing COVID-19 and its impacts in Indian Country.**

Many federal agencies are active in addressing COVID-19 and its impacts, with efforts moving quickly. We ask that, as trustee, you ensure tribal nations' voices are meaningfully engaged in decision making regarding the ways in which DOI carries out the COVID-19 response effort. We also ask that you facilitate tribal nation involvement in decision making by other federal agencies regarding their COVID-19 response efforts as they relate to Indian Country. Tribal nations are on the ground taking care of their people through this crisis and know best what their needs are at this critical time.

- **Establish a DOI Tribal Recovery Lead for Indian Country and work with other federal agencies in establishing their own Recovery Leads to help tribal nations interface with federal agencies and federal agencies interface with each other.**

As DOI and other federal agencies move quickly to address COVID-19 and its impact, there is a risk that uncoordinated actions impacting Indian Country could hamper efforts, especially with regard to quickly disbursing federal funds. We request that you establish a DOI Tribal Recovery Lead for Indian Country. This Lead would be vested with authority to be responsive to tribal nation officials and to coordinate the prioritized and rapid delivery of services to Indian Country. The Recovery Lead would ensure bureaus within DOI function seamlessly together, interface on behalf of DOI with tribal nations and American Indian and Alaska Native organizations, and work with other federal agencies. This would ensure one person within DOI has enough authority to figure out who else needs to be involved, to move dollars as needed, and to speak directly with someone with similar authority at other agencies.

There is precedent for such a position within DOI. In order to carry out the American Recovery and Reinvestment Act (ARRA), DOI Secretary Salazar created a Senior Advisor for Economic Recovery position in the Secretary's Office who had authority to move important actions through bureaucratic red-tape and to execute ARRA objectives at the direction of the President and the Secretary. There is an existing Secretarial Order that would allow such a DOI Tribal Recovery Lead for COVID-19 to be appointed now.³ This position could be either in the Office of the Secretary or the Office of the Deputy Secretary, as either holds line authority over all the agencies

and can coordinate with Assistant Secretary Combs for the Office of Policy, Management and Budget (“PMB”), who in turn can coordinate with and direct the agency budget offices to ensure rapid deployment of resources. We recommend that any Lead established be someone with a breadth of DOI budget experience and knowledge of DOI systems.

As the COVID-19 pandemic continues, a more coordinated and long-term solution will become necessary for addressing COVID-19 and its impacts in Indian Country. We ask that you support our efforts to work with the White House and other agencies to establish a Tribal Recovery Council for Indian Country, which would consist of Tribal Recovery Leads for Indian Country from each relevant agency and representatives from tribal nations. This Council would ensure coordination among agencies and the presence of tribal voices in critical decision making related to addressing COVID-19 and its impacts in Indian Country.

- **Implement ways to facilitate interagency transfers of funding that tribal nations can access to address COVID-19 and its impacts so that funding can be disbursed to tribal nations quickly.**

COVID-19 response funding will not serve its purpose if it is not quickly made available to tribal nations working on the ground. Time is of the essence as the federal government seeks to provide immediate resources and relief to Indian Country.

We ask that you develop and immediately implement ways to facilitate interagency transfers of funds that tribal nations can access to address COVID-19 and its impacts. Not all federal agencies are created equal when it comes to expeditious and broad distribution of dollars to tribal nations. Many agencies lack expertise with regard to quickly disbursing funds to Indian Country. Further, there are numerous barriers that exist within a variety of federal agencies and their respective funding structures that will result in unequal and delayed access to funding intended for Indian Country. In order to facilitate rapid deployment of resources to tribal nations, it is critical that federal agencies are able to transfer funding for Indian Country to those agencies that are able to most quickly disburse such funding to tribal nations and American Indian and Alaska Native organizations.

We ask that you examine the authorities you currently possess for interagency transfers of funds in coordination with other relevant agencies and the White House. Funds made available to tribal nations should be transferred to the agency most able to quickly release those funds to a tribal nation.

We will also be working to secure additional transfer authority, including by coordinating with the White House regarding the possibility of securing an Executive Order, several Secretarial Orders, or an inter-agency MOA as well as legislative authorization. We request that you support our current efforts to pursue the following authorization language:

At a Tribal Nation’s or Tribal Nation Organization’s request or at the discretion of a Federal agency, any amount available under law to any Federal agency for any purpose related to addressing the coronavirus or its impacts may be withdrawn from one appropriation account and credited to another or to a working fund to

facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. This authority applies to Indian specific funding and also to other funding for which Tribal Nations or Tribal Nation Organizations are eligible recipients. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.

There have been many instances in the past when federal funding was made available to Indian Country, but its disbursement was delayed due to bureaucratic hurdles. Such delays now would have disastrous consequences, and therefore, this situation requires creative thinking for ways to avoid delays. There have also been very positive examples, such as the 2009 ARRA inter-agency funding agreement between BIA and the Federal Highway Administration, which resulted in the rapid, transparent, and accountable delivery of funding to tribal nations for reservation roads projects.

- **Implement ways to disburse funding to tribal nations using existing funding mechanisms already in place when possible.**

As you know, many tribal nations already have in place funding mechanisms through which they receive federal funding. In order to facilitate rapid deployment of COVID-19 resources to tribal nations, it is critical that tribal nations and American Indian and Alaska Native organizations are able to receive funding through existing funding mechanisms, processes, agreements, and partnerships, including ISDEAA contracts and compacts. When paired with interagency transfer authority, tribal nations would be able to receive COVID-19 funding from across federal agencies through their existing funding mechanism.

We ask that you examine ways in which existing funding mechanisms can be utilized to quickly disburse to tribal nations funding that can be used to address COVID-19 and its impacts. For tribal nations or American Indian and Alaska Native organizations that do not currently have a funding mechanism in place, we ask that you expedite execution of such a funding mechanism in consultation and coordination with the relevant tribal nation or American Indian and Alaska Native organization.

We will also be working to secure additional authority to utilize current funding mechanisms for disbursement of COVID-19 funds, including by coordinating with the White House regarding the possibility of securing an Executive Order, several Secretarial Orders, or an inter-agency MOA as well as legislative authorization. We request that you support our current efforts to pursue the following authorization language:

Any and all amounts available under law to any Federal agency for any purpose related to addressing the coronavirus and its impacts, regardless of what agency they are apportioned to, must be made available, at the option of a Tribal Nation or a Tribal Nation Organization, to be transferred to Tribal Nations and Tribal Nation Organizations through any existing funding mechanism, including but not limited to contracts, grants, compacts, or annual funding agreements under the

Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), to facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. Federal agencies shall amend existing funding mechanisms on an expedited basis to the extent necessary to disburse such funds.

We want to emphasize that use of such funding mechanisms should not affect the allocation of COVID-19 funding made available to each tribal nation. We only suggest that, once funding allocation determinations have been made, funding available to a particular tribal nation or American Indian and Alaska Native organization be made available through existing funding mechanisms at the option of the tribal nation or American Indian and Alaska Native organization.

- **Review program eligibility criteria with a view to make funding available to address COVID-19 and its impacts.**

The COVID-19 pandemic has resulted in an increased need for tribal nations and their people to access existing federal funding, and such program eligibility criteria should be updated to allow this where possible.

For example, Emergency Assistance is available under the Welfare Assistance program as a one-time funding source for eligible applicants. As workforces in tribal communities are displaced due to closures or miss work due to quarantines, there is a need to expand certain programs to provide certain economic relief to those tribal citizens affected by the spread of COVID-19. We recommend you consider whether existing DOI regulations at 25 C.F.R. § 20.329 for Emergency Assistance under the Welfare Assistance Program can be interpreted to include individuals or families who are affected by COVID-19. DOI regulations at 25 C.F.R. § 20.330 should be temporarily waived to increase individual Emergency Assistance payments from \$1,000 to \$5,000.

- **Create one website housing all information relevant to tribal nations related to COVID-19, including available funds.**

The COVID-19 pandemic has resulted in often disjointed efforts across the federal government, as the crisis and the response to it evolve quickly. Tribal nations have expended significant resources that should be spent elsewhere tracking these efforts. We ask that you create and maintain one website housing all updated information relevant to Indian Country regarding COVID-19, including funds available to tribal nations and American Indian and Alaska Native organizations to address COVID-19 and its impacts.

- **Divert DOI personnel, infrastructure, and other resources to ensure rapid deployment of COVID-19 resources to Indian Country.**

With the infusion of resources for the Operation of Indian Programs, it is critical that Indian Affairs has the necessary personnel and other infrastructure to rapidly distribute these resources. Rapid deployment of COVID-19 resources to tribal nations will require significant staffing and infrastructure at DOI. For this reason, we ask that you ensure DOI has personnel, staffing infrastructure, and resources available to distribute funds and resources and divert resources where necessary to this important endeavor.

The following are recommendations for ensuring DOI has the necessary resources in place: quickly determine existing DOI staff that could support the rapid disbursement and deployment of funding and resources to tribal nations; grant such staff detail assignments to key Indian Affairs positions that will improve the delivery of COVID-19 funding and resources; and allow overtime for such staff as well as DOI financial disbursement staff and Awarding Officials. Further, under the unique circumstances posed by COVID-19, including the potential for partial or full government shutdown and/or increased telework, the federal employees that support distribution of funding to tribal nations must be deemed essential so that transfers can be conducted without interruption. We ask that you encourage other federal agencies to take similar measures.

Thank you for your consideration of the recommendations outlined in this letter. We look forward to working with you to ensure that Indian Country's concerns and priorities are comprehensively addressed, as we respond to the COVID-19 emergency.

Sincerely,



Kevin J. Allis
Chief Executive Officer
National Congress of American Indians



W. Ron Allen
Tribal Chairman/CEO Jamestown S'Klallam
Tribe

President of the Board SGCETC



Kitcki Carroll
Executive Director
United South and Eastern Tribes Sovereignty
Protection Fund



Sarah Kastelic
Executive Director
National Indian Child Welfare Association

¹ Memorandum from Margaret Weichert, Deputy Director of Management, OMB, to Heads of Executive Departments and Agencies, re Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) (Mar. 9, 2020).

² Memorandum from Margaret Weichert, Deputy Director of Management, OMB, to Heads of Executive Departments and Agencies, re Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations (Mar. 9, 2020).

³ https://www.doi.gov/news/pressreleases/2009_03_05_release.