



CALISTA CORPORATION
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Ms. Catherine Wolfram
Acting Assistant Secretary Economic Policy
Point of Contact for Tribal Consultation
Office of Economic Policy
U.S. Department of the Treasury
Washington, DC 20220
Via Email: tribal.consult@treasury.gov

Re: Calista Corporation Comment on Coronavirus Relief Funds Tribal Allocations Questions

Acting Assistant Secretary Wolfram:

INTRODUCTION

On behalf of the Calista Corporation (“Calista”), a regional Alaska Native Corporation (“ANC”) established under the Alaska Native Claims Settlement Act of 1971 (“ANCSA”), we thank you for allowing us the opportunity to submit written comments to the Department of the Treasury (“Treasury”) on what appears to be a proposed midstream re-allocation of CARES Act Tribal Relief Funds (“TRF”).

Calista serves more than 33,000 Alaska Native shareholders, inclusive of tribal citizens, by providing benefits to the Alaska Native people of the Yukon-Kuskokwim (“YK”) Delta region of Western Alaska. Our region is home to 56 federally recognized Tribes – nearly one-quarter of all the Tribes in Alaska. Our ANCSA land entitlement comprises 6.5 million acres.

YK Delta communities are located along the Yukon and Kuskokwim Rivers and the Bering Sea and spread across an area the size of New York State. Our communities are not connected by road system. The only access to each community is by river ice road, frozen tundra, small watercraft during the short summer, or airplane. The only options to reach the rest of Alaska are ships or airplane. These logistics make it very difficult and costly to provide even basic goods and services in our region. The COVID-19 pandemic has hit our region hard, and we greatly need TRF resources.

TRIBAL SOVEREIGNTY AND ANCSA CORPORATIONS

The Tribes of the Calista region have existed as sovereign nations since time immemorial. Although ANCSA extinguished aboriginal title to the Tribe’s traditional lands in exchange for Alaska Natives (including tribal citizens) being able to form and receive benefits from Calista and our region’s ANCSA Village Corporations, ANCSA did not extinguish the Tribe’s sovereignty. Calista respects the Tribes of our region and supports their exercise of sovereignty.

As the ANCSA Regional Corporation, Calista provides significant benefits – including federal benefits – to our Alaska Native Shareholders and their descendants, many of whom are tribal citizens.

Under ANCSA, the Tribes and tribal citizens of our region paid a dear price for the right to form and receive benefits from Calista and our region’s ANCSA Village Corporations: Extinguishment of aboriginal title to their traditional lands. In this respect, our Tribes are similarly situated to Lower 48 Treaty Tribes: The federal government extinguished aboriginal title in their traditional lands, and in exchange for certain sacred promises. Included in the sacred promises contained in ANCSA, is the right to form and receive benefit from ANCSA Corporations. **Thus “the promise of ANCSA” is an important part of the federal government’s Trust Responsibility to Alaska Natives and Tribes.** To the extent a proposed federal action harms the ability of ANCSA Corporations to provide benefits to the Alaska Natives, that federal action violates the promise of ANCSA. Such a violation is of serious concern not only to ANCSA Corporations, but also to Alaska Natives and Tribes.

TRIBAL CONSULTATION AND THE TRUST RESPONSIBILITY

Federal agencies are required to engage in meaningful tribal consultation before taking any action that could impact ANCs or Tribes. Giving only a few days of notice regarding a proposed Treasury action that could negatively impact Alaska ANCs and Tribes by many millions of dollars is not meaningful consultation. To the contrary, it is a clear violation of the consultation requirement. It also raises a question of Treasury’s commitment to fulfilling the Trust Responsibility to Alaska Natives and Tribes.

RESPONSES TO TREASURY’S 6 QUESTIONS

1. What are your thoughts about the population-based allocations made in May 2020 based on the IHBG formula area population of Tribes?

Those allocations have already been made and should not be revisited except for the few limited instances in which the IHBG formula distribution resulted in gross inequities. Such re-distributions should be small in scale and not significantly impact the distribution that the federal government has already promised the Tribes and ANCs that it would follow. For example, even in the case of the Shawnee Tribe in *Shawnee Tribe v. Mnuchin*, the Tribe sought an injunction that would have only prohibited the Secretary from distributing about \$12 million. The Trust Responsibility to the Shawnee and similarly situated Tribes must be upheld, but not at the cost of violating the Trust Responsibility to other Tribes, including Alaska Tribes. By cutting ANCSA Corporation allocations or redistributing those funds away from Alaska Tribes violates this trust responsibility. **Funds designated for Alaska should remain designated to Alaska in fulfillment of Treasury’s prior commitments to Alaska Tribes and ANCs, and of the Federal Government’s Trust Responsibility to Alaska Natives and Tribes.** Treasury should rectify the funding inequities of the Shawnee and other Tribes through different means.

2. What are your thoughts about using enrollment as the basis for a reallocation?

See answer to Question No. 1 above. Tribal enrollment can vary greatly because each Tribe decides for itself, in the exercise of its sovereignty, how to define tribal citizenship. The IHBG formula area population was a reasonable methodology to use as one of several factors in determining how TRF funds would be allocated. Although some minor adjustments are needed in the case of the Shawnee and a few other Tribes to avoid gross inequities, the basic approach was reasonable and should not be altered in a major way. Major alterations would result in Treasury breaching its prior commitments to many other Tribes. The reality is, many Tribes, and also ANCs, relied on the 2020 commitments by Treasury in deciding the amount and type of COVID-related services to provide to their tribal citizens. Re-allocating TRF funds mid-stream in the process by implementing a new distribution methodology in the middle of the process would result in a wholesale breach of Treasury's prior commitments to many Tribes and Alaska Natives. Rather than engaging in any significant post hoc adjustments of the formula, Treasury should simply honor its prior commitments.

3. What are your thoughts about using the enrollment figures previously provided by tribes in response to Treasury's initial request for that information in April 2020?

See answer to Questions No. 1 and No. 2 above. Treasury should honor the commitments it has already made to Alaska Natives and Tribes with these previously appropriated funds.

4. Do Tribes have updated data as to the amount of their increased expenditures in 2020 as compared to fiscal year 2019?

Yes, but per the CARES Act statutory language, only fiscal year 2019 increased expenditure amounts should be taken into account in the distribution formula.

5. To what extent have Tribes used funds to support not only tribal members and other residents of their formula area but also members who live beyond the formula area?

Each Tribe decides this for itself in the exercise of its sovereignty. That a portion of the allocation of the funds was based on the IHBG formula area population does not mean that Tribes are, or should be, subject to geographical constraints on the use of TRF funding. Each Tribe knows how to best meet the COVID-related needs of its tribal citizens. Treasury should respect and support that.

6. To what extent have Tribes exhausted their TRF funding?

See answer to Question No. 5 above. Each Tribe decides for itself, in the exercise of its sovereignty, exactly how to use their TRF funds, within the general constraints of the CARES Act.

CONCLUSION

To the greatest extent possible, Treasury should honor the commitments it has already made to Tribes. In the case of Alaska Natives and Alaska Tribes, this means honoring the commitments it has already made to the ANCSA corporations which provide benefits to Alaska Natives, including tribal citizens.

Treasury is holding funds that Congress directed to go to ANCSA corporations and should not reallocate those funds away from Alaska and Alaska Native people. Treasury should correct distribution inequity issues through a different method and honor its prior commitments by releasing those critically needed relief funds to ANCs and/or Alaska Tribes for the benefit of Alaska Native people. Alaska has the highest per capita population of Native people – about 20% - and our people have relied on the Treasury’s prior commitments to provide support to help us respond to the devastating COVID pandemic.

If ANCs are deemed ineligible for CARES Act funding by the Supreme Court, or if Treasury undertakes a major reallocation of TRF funds, we urge Treasury to reallocate the funds being held for ANCSA corporations to Alaska Tribes. Alaska Natives have suffered from the ravages of COVID-19 as much as any other Native people in the Nation. Re-allocation of the funds previously committed for Alaska Natives to non-Alaska Tribes would result in gross inequity, violate Treasury’s prior commitments to Alaska Natives and Alaska Tribes, and breach the federal government’s Trust Responsibility.

Because most every Alaska Native is a shareholder of a village and regional corporation, ANCs as a group serve nearly every Alaska Native family. Re-allocating TRF funds away from ANCs harms the thousands of ANC Native shareholders who are not served by a Federally Recognized Tribe.

Finally, given the levels of poverty, remoteness, lack of infrastructure, including water and sanitation, and extremely high costs in rural Alaska Native communities relative to Tribes in the Lower 48, the formula that Treasury used to determine the present allocation of TRF funding for Alaska Natives, including through ANCs, is, if anything, underweighted: If any adjustment in the formula is called for, it should result in an increase of funding for Alaska Natives, whether through the ANCSA corporations or through the Alaska Tribes.

Quyana,

CALISTA CORPORATION



Andrew Guy
President and CEO