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TRIBAL GOVERNMENT LEGISLATIVE — CLIENT ALERT

TO: TRIBAL LEADERS AND BUSINESS CLIENTS
FROM: BIG FIRE LAW & POLICY GROUP
DATE: SEPTEMBER 29, 2020
RE: COVID-19 FEDERAL UPDATE &
WEDNESDAY INDIAN COUNTRY HEARING

COVID-19 continues to grip Indian Country, our country and the world. Tribal leaders, tribal organizations, advocates and allies have been working non-stop to protect the health, safety and economic recovery of their people. On March 27, 2020, Congress approved a \$2 trillion spending package called “the Coronavirus Aid, Relief, and Economic Security Act” or CARES Act which provided historic and much needed resources to tribes. The CARES Act included programs such as the \$8 billion Coronavirus Relief Fund, the Paycheck Protection Program and increased resources for the Indian Health Service to respond to this public health crisis.

Congress has struggled to pass additional legislation to provide further relief from the pandemic as we continue to try to live our lives safely until there is a vaccine. On May 15, the U.S. House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions Act (“HEROES” Act). In July and early September, the Senate attempted to pass its own legislation, the Health, Economic Assistance, Liability Protection and Schools Act (“HEALS” Act) and the “Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act,” a.k.a. “skinny bill”), and failed. As we chaotically lurch towards a presidential election and lame duck session, there is no end in sight to the pandemic and no further relief on the way.

In the meantime, a House appropriations subcommittee will hold a hearing on COVID-19 in Indian Country on Wednesday. Three national tribal organizations will be witnesses for this hearing.

I. CARES Act

A. Healthcare

Congress directed more than \$1 billion, to remain available until September 30, 2021, for the Indian Health Service (“IHS”), tribes and urban health facilities to prevent, prepare for, and respond to COVID-19. IHS and the White House have been holding weekly, now bi-weekly, telephone calls with tribal leaders to make announcements and hear from tribal leaders about how the needs in their communities are or are not being met.

As we have learned more about how the virus spreads, guidelines from the Centers on Disease Control and Prevention have emphasized social distancing and social isolating measures such as wearing face coverings, handwashing and staying 6 feet apart from people. These precautions will likely remain until a vaccine is discovered.

B. Indian Programs, Bureau of Indian Affairs (BIA)

Nearly \$500 million was allocated for BIA “Operations of Indian Programs” to prevent, prepare for, and respond to coronavirus including, but not limited to, funds for public safety and justice programs, deep cleaning of facilities, purchasing personal protective equipment, purchasing information technology to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals), and assistance to tribal governments.

C. Coronavirus Relief Fund

The CARES Act created the Coronavirus Relief Fund for state, local and tribal governments to respond to COVID-19. Congress allocated \$8 billion for tribes. The law required that funds be distributed not later than 30 days of enactment (April 26, 2020). Relief funds are to be used for increased expenditures related to COVID-19 incurred March 1 - December 30, 2020.

The U.S. Department of the Treasury held several tribal consultations on how to allocate funds to tribal governments and ultimately determined that Alaska Native corporations were eligible for the fund. Tribes disagreed with Treasury’s decision and there has been ongoing litigation since April.

To date, the \$8 billion fund has **not** been fully distributed to tribal governments. These critical relief funds remain the subject of litigation. Instead of what should have been one payment in full by April 26, tribes received three partial payments of varying amounts in early May and mid-June. Depending on the outcome of litigation, there is potential for the remainder of the fund to be paid to tribal governments in yet another payment.

D. Litigation

In April, several tribes filed lawsuits challenging Treasury’s determination to include Alaska Native corporations in the Coronavirus Relief Fund. On June 26, the U.S. District Court for the District of Columbia decided that Alaska Native corporations were eligible for the fund. Most recently, on September 25, the U.S. Circuit Court for the District of Columbia issued an opinion overturning the D.C. District Court opinion. Alaska Native corporations will soon need to make a decision on whether to appeal this decision.

E. Extension of Time and Flexibility on Spending

Time and time again, tribes have requested additional time and flexibility for spending their coronavirus relief funds. Tribes had little to no insight into the formula that the U.S. Department of the Treasury used despite consultation. Even when Treasury made what became the first, second and third payments and described the different formulas used, tribes were unable to determine how such amounts were calculated by Treasury.

As a result, tribes have not been able to properly plan for an unknown allocation of funds and therefore have not been able to prioritize the numerous needs they have to respond to the COVID-19 public health emergency. In addition, since the payment of tribal relief funds was significantly delayed by almost two full months, all tribes lost critical time to implement preparedness and response efforts.

With Congress unwilling to take up another pandemic package, and no inclusion of an extension and flexibility into the Continuing Resolution for government spending this week, tribes are required to follow original deadlines in the CARES Act and Treasury Guidances.

II. Indian Country Appropriations Hearing

On Wednesday, **September 30, 2020**, the U.S. House of Representatives Appropriations Subcommittee on Interior, Environment, and Related Agencies will hold a hearing entitled, “Indian Country COVID-19 Response and Update” at 1 pm eastern.

Witnesses:

Kevin Allis, CEO, National Congress of American Indians

Bio:

Kevin Allis (Forest County Potawatomi) is Chief Executive Officer of the National Congress of American Indians. Allis has two decades of experience working in Washington, D.C. as an attorney and government relations practitioner. Throughout his career, he works with key congressional offices, relevant administrative agencies, and other advocacy organizations, to strategically advance top priorities for Indian Country. Allis’ previous roles include Executive Director of the Native American Contractors Association, Board Chairman of the Potawatomi Business Development Corporation and Founder & President of Thunderbird Strategies, LLC. Alongside practicing Federal Indian Law and serving as a Labor and Employment litigation attorney, Allis served eight years as an officer with the Baltimore Police Department

Carolyn Angus-Hornbuckle, COO, National Indian Health Board

Bio:

Carolyn Angus-Hornbuckle is Chief Operating Officer and Director of Public Health Policy and Programs at the National Indian Health Board. In this dual role, she provides day-to day leadership for the NIHB Health Policy Center, and support to the CEO in planning and implementation of all organization operations. Prior to NIHB, Carolyn served as a Senior Project Officer at the National Congress of American Indians. She was awarded her JD from the Sandra Day O’Connor College of Law at Arizona State University in 2009. While there, she interned at the U.S. Attorney’s Office for the District of Arizona. She served as a law clerk for the Office of the General Counsel at the Salt River Pima-Maricopa Indian Community.

Francys Crevier, CEO, National Council of Urban Indian Health

Bio:

Francys Crevier (Algonquin) is the Chief Executive Officer of the National Council of Urban Indian Health. She has been serving Indian Country for over a decade in various capacities from clerking for Tribal supreme courts and working for the United Nations Special Rapporteur for the Rights of Indigenous Peoples to representing Tribes as in-house counsel and special prosecutor. She joined the Indian healthcare field in 2015 to advocate for better healthcare in Indian Country as well as educate Tribal members and communities on their alternative healthcare options. She joined NCUIH in 2016 as the Policy Analyst and Congressional Relations Liaison and then the Director of Governmental Affairs. Francys received her J.D. from University of Arizona Law with a Certificate in Indigenous Peoples Law and Policy and her B.A. in Public Administration from Florida International University.

Watch the Hearing

[HERE](#)

About the Sub-Committee

Jurisdiction:

- Department of the Interior (except Bureau of Reclamation and Central Utah Project)
- Environmental Protection Agency
- Related Agencies
 - Advisory Council on Historic Preservation
 - Agency for Toxic Substances and Disease Registry (HHS)
 - Chemical Safety and Hazard Investigation Board
 - Commission of Fine Arts
 - Council on Environmental Quality and Office of Environmental Quality
 - Forest Service (USDA)
 - Indian Health Service
 - Institute of American Indian and Alaska Native Culture and Arts Development
 - John F. Kennedy Center for the Performing Arts
 - National Capital Planning Commission
 - National Foundation on the Arts and the Humanities (except Institute of Museum and Library Services)
 - National Gallery of Art
 - National Institute of Environmental Health Sciences (HHS, formerly EPA/Superfund)
 - Office of Navajo and Hopi Indian Relocation
 - Presidio Trust
 - Smithsonian Institution
 - United States Holocaust Memorial Museum
 - Eisenhower Memorial Commission
 - Woodrow Wilson International Center for Scholars

GET OUT AND VOTE

If you have questions, concerns or would like help submitting testimony on this issue please contact your Big Fire attorney.

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