UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION et al., Plaintiffs, v. STEVEN MNUCHIN, in his official capacity as Secretary of the Treasury, Defendant.	Case No. 1:20-cv-1002-APM
CHEYENNE RIVER SIOUX TRIBE et al., Plaintiffs, v. STEVEN MNUCHIN, in his official capacity as Secretary of the Treasury, Defendant.	Case No. 1:20-cv-01059-APM
UTE TRIBE OF THE UINTAH AND OURAY RESERVATION, Plaintiff, v. STEVEN MNUCHIN, in his official capacity as Secretary of the Treasury, Defendant.	Case No. 1:20-cv-01070-APM

JOINT STATUS REPORT

On Tuesday, April 28, 2020, the Court ordered the Parties to "meet and confer and, by May 1, 2020, file a Joint Status Report that proposes a schedule for further proceedings in this matter." Minute Order (4/28/2020). The Court also ordered Defendant to "update the court on any developments in the disbursement of Title V funds to federally recognized Indian tribes, as well as any funds withheld from ANCs pursuant to the court's preliminary injunction order." *Id.* Pursuant to that minute order, the Parties have met and conferred, and offer their positions below.

Defendant's Update on Disbursements and Proposal for Further Proceedings

Defendant has not yet arrived at a determination as to the amounts to be paid to Tribal governments from the Coronavirus Relief Fund under Title V of the CARES Act, Pub. L. 116-136, 134 Stat. 281 (2020). Defendant plans to post details of the allocation on its website.[1] As contemplated by the Court's April 27, 2020, memorandum opinion, Defendant intends "to award some money to ANCs and withhold[] those [ANC] payments to comply with the court's order." Mem. Op. (ECF No. 36) at 34.

Regarding a schedule for further proceedings, Defendant respectfully suggests that, because this Court has granted a preliminary injunction in part, and Defendant intends to make partial payments of the amount not subject to the injunction, the remainder of this case should be allowed to proceed in the ordinary course. Pursuant to the Federal Rules of Civil Procedure, the next step would be for Defendant to answer or otherwise respond to the consolidated complaints. Defendant proposes to treat the filing date of the third case (No. 1:20-cv-01070-APM) as the date of service for all three cases, and respectfully requests that this Court set a consolidated answer deadline of Monday, June 22, 2020.

Defendant notes that Plaintiffs have proposed waiving Defendant's obligation to answer, and Defendant is willing to discuss with Plaintiffs that and other means of expediting this case, including the possibility of moving directly to summary judgment briefing in light of the parties' agreement that this case presents purely legal issues (and therefore should not require the submission of an administrative record). But Plaintiffs' demand for Defendant to submit an administrative record within the next two weeks, and to complete summary judgment briefing by the end of this month, is unreasonable.

As an initial matter, Amicus Ahtna, Inc. has recently moved to intervene as a party in this case. (ECF No. 43). That motion will need to be decided before any additional schedule is set, in

[1] *See* U.S. Dep't of Treasury, *Coronavirus Relief Fund: Payments to Tribal Governments, available at* https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Payments-to-Tribal-Governments.pdf (last visited April 30, 2020).

order to determine whether the intervenor should be included in scheduling discussions. Furthermore, in light of the short time that has passed since the issuance of the preliminary injunction, Defendant is still deciding whether to appeal from that decision. Should Defendant appeal, it may move the Court to stay or alter the schedule for this case, on the grounds that an appellate decision may resolve the need for further proceedings. Plaintiffs' expedited schedule, contrary to the Federal Rules of Civil Procedure, would make it entirely unlikely that any appeal could be heard on the preliminary injunction prior to a decision by this Court on the merits.

Moreover, because Defendant is working diligently to process initial payments, it will be difficult, if not impossible, to produce an administrative record by the time suggested by Plaintiffs. Defendant would ask this Court to allow Defendant to focus now on making payments, rather than compiling an administrative record, in the event that the Court believes that such a record is necessary for its decision on summary judgment.

Plaintiffs' Proposal for Further Proceedings

The Plaintiff Tribes propose the following schedule for further proceedings in this matter. This proposal is based in part on the U.S. Department of the Treasury's representations during the parties' meet and confer on April 30, 2020. Plaintiffs understood from that discussion that there was some possibility that the allocation of Title V relief funds would be finalized today. It now appears that will not occur. It remains Plaintiffs' understanding, based on the meet and confer, that Treasury is close to finalizing its allocation of relief funds and that it will begin distributing payments allocated to Plaintiffs and to other federally recognized Indian Tribes within a few days. Accepting Treasury's representation at face value, Plaintiffs do not intend to amend their respective complaints at this time to compel Treasury to act by stating a claim under 5 U.S.C. § 706(1) ("The reviewing court shall—(1) compel agency action unlawfully withheld or unreasonably delayed[.]") or other source of law, but reserve the right to do so if such payments are not immediately forthcoming next week.

Plaintiffs' proposal for expedited proceedings is mindful that Congress required the Secretary of the Treasury to make Title V payments to Tribal governments not later than 30 days

after the enactment of the CARES Act, which was April 26, 2020. 42 U.S.C. § 801(b)(1). Thus, the Secretary is already well past the statutory deadline. Plaintiffs and other Tribes are in grave need of all $8,000,000,000 appropriated by Congress to support the essential governmental services they are providing to protect and support their communities in response to the COVID-19 pandemic. An expedited case schedule and final judgment is also critical because Congress's appropriation extends only "for fiscal year 2020," 42 U.S.C. § 801(a)(1), which expires on September 30, 2020. The single issue before the Court, moreover, is a pure question of law on which the Court has already received extensive briefing. As the Secretary suggests, an administrative record (which under the circumstances of this case is likely to be very limited) may be unnecessary. The Plaintiff Tribes accordingly propose the following schedule:

Secretary's production of administrative record, if necessary:	Friday, May 15, 2020
Cross-motions for summary judgment (all parties):	Friday, May 29, 2020
Combined responses/replies on cross-motions (all parties):	Wednesday, June 10, 2020

The Plaintiff Tribes of course understand that if the Secretary chooses to appeal the Court's preliminary injunction order, the appeal may necessitate some changes in this schedule. But the Secretary's present uncertainty on that score provides no basis to delay proceedings in this Court. The Tribes' proposed schedule also allows ample time to complete briefing on amicus curiae Ahtna, Inc.'s motion to intervene prior to the filing of cross-motions for summary judgment.

Dated: May 1, 2020

Respectfully submitted,

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