



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, DC 20240

April 24, 2020

The Honorable Harold Frazier  
Chairman, Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, South Dakota 57625

Dear Chairman Fraizer:

It has come to our attention that the Cheyenne River Sioux Tribe (“CRST”) established a checkpoint where United States Route (“US 212”) enters the Cheyenne River Sioux Reservation (“Reservation”) to prevent entry of non-tribal members from travelling through the Reservation in an effort to minimize exposure from locations with confirmed COVID-19 cases. Like you, the Bureau of Indian Affairs (“BIA”) is working to ensure the safety and health of Indian communities like CRST during this current national health crisis. In doing so, however, we must also insure that the actions taken in response are legally authorized and do not infringe on the constitutional rights of individuals.

On April 8, 2020, I issued a memorandum regarding Temporary Guidance-Road Closures or Restrictions on Tribal Lands. The memorandum clearly identifies situations where tribes must consult and obtain agreement with other road owners. It is my understanding that this memorandum has been shared with you and other tribal leaders throughout South Dakota. As described in the guidance, failure to consult is violation of 25 C.F. R. § 170.114 (a)(1) and (b). We are becoming increasingly concerned that these requirements, and others, have not been satisfied to date by CRST, particularly with regard to roads that are not owned by CRST.

I note that the State of South Dakota (“State”) owns US 212 and CRST cannot legally close or restrict travel on US 212 without first consulting with the State as detailed in my memorandum. If the State has not been consulted and has not agreed to the closure of US 212, CRST should immediately reopen the highway for motorists and take the necessary steps to come into compliance with Federal law. To not do so could have serious consequences.

It has further come to our attention that the checkpoint was not established by, and is not being operated by, CRST law enforcement officers. Any individual that is not a

legally authorized CRST, BIA, or state law enforcement officer that is blockading a federal or state roadway may be found to be in violation of numerous federal and state laws. CRST should immediately notify such individuals of their criminal jeopardy and order them to no longer block any state or BIA roads.

Following these measures, I invite you to consult with BIA on a process and mechanism to assist CRST in protecting public health on the reservation. We understand that CRST's actions with respect to US 212 are in response to the COVID-19 pandemic. However, unless the State agrees to temporarily close or otherwise restrict access along US 212, CRST's checkpoint and roadblock continues to be unauthorized, and must be immediately removed. Failure to do so may result in conflicts between CRST and motorists and violations of motorists' constitutional rights.

We strongly encourage CRST to meet with the State of South Dakota and attempt to reach a mutually acceptable plan for the portion of US 212 that runs through the Reservation that both protects the CRST community from COVID-19 while also facilitating safe passage of motorists along US 212.

Our office is willing and able to help facilitate a conversation with the State. Please advise within the next 24 hours whether CRST intends to comply. Notification can be made in writing to Timothy LaPointe, BIA Regional Director for the Great Plains Region.

We look forward to working with you to resolve this matter.

Sincerely,



Darryl LaCounte  
Director, Bureau of Indian Affairs

Enclosed: Temporary Guidance-Road Closures or Restrictions on Tribal Lands.