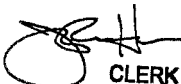


FILED

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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

NORTHERN CHEYENNE TRIBE,
ROSEBUD SIOUX TRIBE, YANKTON
SIOUX TRIBE, CROW CREEK SIOUX
TRIBE, and DEFENDERS OF THE
BLACK HILLS,

CIV03-5019

Plaintiff,

STANDING ROCK SIOUX TRIBE,

Plaintiff-Intervenor,

**DECLARATION OF
CHARLES A. KREIMAN**

v.

MEL MARTINEZ, in his official capacity
as United States Secretary of Housing and
Urban Development, BLACK HILLS
COUNCIL OF LOCAL
GOVERNMENTS, STURGIS
INDUSTRIAL EXPANSION
CORPORATION, CITY OF STURGIS,
and BLACK HILLS SPORTSMAN'S
COMPLEX, INCORPORATED,

Defendants

1. I, Charles A. Kreiman, am the Program Manager , Program Management Team 2, Office of Community Planning and Development ("CPD"), for the U.S. Department of Housing and Urban Development ("HUD") in Denver, Colorado. I have held this position since 1986. In this capacity, I and my staff of CPD Representatives are responsible for HUD oversight of 4 State Community Development Block Grant ("CDBG") programs, 17 city and county CDBG programs and other CPD programs in our assigned jurisdictions.

2. I have worked for HUD CPD and its predecessor organizations in various locations, including HUD Headquarters, since 1971 and have held positions that have included responsibility for the CDBG program since enactment of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.* (the "Act"), which established the CDBG program.

3. Since 1981, states have had the opportunity to administer the CDBG program for non-entitlement areas. Non-entitlement areas include those units of general local government (cities and counties) that do not receive CDBG funds directly from HUD. Central cities of metropolitan areas, other cities in metropolitan areas with a population of 50,000 or more, and certain large counties (generally 200,000 population), receive a direct allocation of CDBG funds from HUD. In South Dakota, Rapid City and Sioux Falls are CDBG Entitlement cities and receive funds directly from HUD. All other units of general local government in South Dakota are eligible to receive CDBG funds by applying to the State of South Dakota.

4. Each state (as well as each CDBG entitlement city and county) receives an annual amount of CDBG funds based on a statutory formula applied to the amount appropriated each year. The formula takes into account population, poverty, incidence of overcrowded housing and the number of older housing units.

5. The CDBG allocation to South Dakota has been:

1999	\$8,103,000
2000	\$8,141,000
2001	\$8,462,000
2002	\$8,405,000
2003	\$7,643,000

6. The policy of HUD in administering the State CDBG program is to give “maximum feasible deference to the state’s interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary’s obligation to enforce compliance with the intent of the Congress as declared in the Act.” 24 C.F.R. § 570.480(c)

7. In order to receive its annual allocation of CDBG funds, a state must prepare a Consolidated Plan every five years and an Action Plan every year. The Consolidated Plan includes information on needs and strategies, and also includes certification of compliance with program rules and applicable laws. 24 C.F.R. Part 91.

8. For states, the Consolidated Plan requires a description of the method for distributing CDBG funds to local governments rather than a list of specific activities. 24 C.F.R. §§ 91.320(c) and (g). Specific requirements for the CDBG method of distribution include a description of all criteria used to select applications from local governments, allocation of funds among funding categories, threshold factors, and grant size limits. 24 C.F.R. § 91.320(g).

9. A state that participates in the CDBG program awards grants to non-entitlement units of general local government, which in turn carry out development activities. The award of such grants follows the method of distribution described in the state’s Consolidated Plan. There is no

prior HUD review or approval of the specific activities funded by grants the state makes to local governments.

10. The State of South Dakota submitted its Consolidated Plan for Fiscal Year 1999 funds on January 29, 1999. HUD approved the Fiscal Year 1999 Community Development Block Grant funds to the State of South Dakota on March 10, 1999, and entered into a grant agreement with the State of South Dakota on April 6, 1999.

11. Upon execution of the grant agreement between HUD and the State of South Dakota for Fiscal Year 1999 CDBG funds, the funds awarded to the State were added to a line of credit established for the State with the U. S. Department of the Treasury ("Treasury"). The funds in the line of credit are available for the State of South Dakota to draw upon as needed to pay for eligible CDBG costs.

12. The State of South Dakota awarded CDBG funds to the city of Sturgis in the amount of \$800,000 for the proposed project, and \$25,000 for related administrative expenses, for a total of \$825,000. The funds used for the State's grant to Sturgis were from the FY 1999 grant, since funds from that grant were the oldest grant from which funds remained available for distribution at the time of the State's award to the city. The State of South Dakota reported to HUD that it had awarded funds to the city of Sturgis for the subject project by entering information in HUD's Integrated Disbursement and Information System ("IDIS"). IDIS shows the initial funding date as June 13, 2002.

13. The State of South Dakota draws funds from its line of credit periodically to pay costs of CDBG activities incurred by its local recipients, such as the city of Sturgis. The State draws on its line of credit through IDIS, under which each activity is assigned a discreet identifying number. The State makes a request to draw funds, which includes the appropriate identifying number and the amount of funds for each activity for which cash needs exist. The State submits this request through IDIS to HUD electronically. Once the State submits the request, it is processed automatically through IDIS to HUD and then to Treasury. Treasury processes an electronic transfer of funds to the State of South Dakota's designated bank account, similar to the way Federal employee salaries and Social Security benefits are transferred to the recipient's designated account.

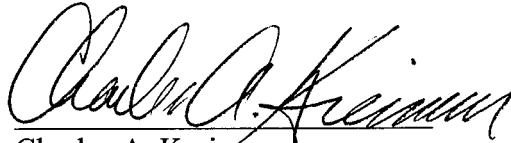
14. The IDIS system shows that as of March 21, 2003, the State had drawn \$301,300 for the Sturgis project and \$12,500 for project administration, for a total of \$313,800.

15. The State CDBG Program provides that the state has primary responsibility for making reviews and audits of units of general local government to meet the requirements of the Act, and to take action in cases of noncompliance. 24 C.F.R. § 570.492. The role of HUD focuses on ensuring that the state has distributed funds to local governments in a timely manner; carried out its certifications of compliance with the Act, the CDBG regulations and other applicable law;

and made reviews and audits of the units of general local governments as necessary to ensure compliance by state recipients. 24 C.F.R. § 570.493.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated this 21st day of March 2003.


Charles A. Kreiman