



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

January 10, 2020

Sent via Certified Mail

Bryan Mercier, Regional Director
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169
(509) 231-6702

Re: The Yakama Nation's Opposition as an Interested Party to the Colville Tribes' Fee-to-Trust Acquisition in Pasco, Washington

Dear Regional Director Mercier:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"). The Yakama Nation asks that the Northwest Regional Office of the Bureau of Indian Affairs and the U.S. Department of Interior Secretary cease taking any Yakama Nation aboriginal lands into trust for the Confederated Tribes of the Colville Reservation ("Colville"). The Yakama Nation objects to Colville's attempt to lay any claim within our Treaty Territory. We stand firm in our position that neither Colville nor any constituent band may claim aboriginal rights to the Yakama Nation's ancestral lands. The Yakama Nation will oppose this development at every level.

Since time immemorial, the original, free, and independent Nations that were later confederated as the Yakama Nation, have thrived on the lands and resources handed down from Tamanwala', the Creator. We signed the Treaty with the Yakamas of June 9, 1855 (12 Stat. 951) ("Treaty of 1855") and became one Nation, the Yakama Nation, "which [is] the entity vested with the rights of the 1855 Treaty." *United States v. Oregon*, 2008 WL 3834169, at *16 (D. Or. Aug. 13, 2008), *aff'd sub nom. United States v. Confederated Tribes of Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010). These sacred rights vested pursuant to our Treaty "belong to the tribal entity as a whole, [and] not to its component bands individually." *United States v. State of Or.*, 29 F.3d 481, 487 (9th Cir.), *amended*, 43 F.3d 1284 (9th Cir. 1994).

In the Treaty of 1855, the Yakama Nation reserved the right to live by Tamanwala's laws. These rights extend broadly throughout our original aboriginal territory. Our rights prove both *exclusive* and *primary* as to any other original nation within the territory described in Article I of our Treaty of 1855 ("Treaty Territory"):

Commencing at Mount Rainer, thence northerly along the main ridge of the Cascade Mountains to the point where the northern

Yakama Nation, Post Office Box 151, Toppenish, WA 98948 (509) 865-5121

tributaries of lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119° 10',) which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47°) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction in the Moh-hah-ne-she, or southern tributary of the same; thence, in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Percé tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks," below the Priest's Rapids; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the westerly extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

In other words, our Ancestors reserved rights both *exclusive* and *primary* as to any other original nation. The Treaty today stands executed by the Yakama Nation, the Nation that "by agreement of the separate tribal groups, [became] the successor in interest to the rights of the former separate entities." 12 Ind. Cl. Comm. 301 at 367. It was by our Treaty that all "tribal rights to the land to which each separate tribal entity held Indian title were *merged*." *Id.* (emphasis added). It is our Nation, the Yakama Nation, that possesses the rights to the lands above ceded. Neither Colville nor any constituent band of Colville possess such rights.

The Palouse of Colville members cannot lay claim to the Yakama Nation's lands. It is true that members of the Palouse Band signed our Treaty and remain named in its Preamble. Some Palouse people, however, did not join the Yakamas and eventually became located on the Colville Reservation to become the Palouse of Colville. *Id.* at 368. Consequently, the Palouse of Colville possess only those rights that Colville established by the Colville Indian Reservation Executive Order of July 2, 1872, and Colville's 1891 Agreement.

Indeed, Colville and its constituent bands are not parties to any treaty with the United States and do not possess rights beyond the exterior boundaries of their previous Reservation. The

United States Supreme Court recognized the jurisdictional breadth of Colville's rights in *Antoine v. United States*, 420 U.S. 194, 197-98 (1975), where the Supreme Court determined that Colville's 1891 Agreement reserved rights only within the diminished northern half of Colville's previous Reservation. Neither the Executive Order of July 2, 1872, nor the 1891 Agreement established any right to Colville or any constituent band or person of Colville beyond the exterior boundaries of the Colville Reservation that was established in 1872.

Colville's attempt to use a constituent band to gain aboriginal rights outside its 1872 Reservation boundaries has been determined an erroneous act before. In *U.S. v. Confederated Tribes of the Colville Reservation*, 606 F.3d 698 (9th Cir. 2010), the Yakama Nation successfully opposed the Colville's attempt to assert 1855 Treaty-based fishing rights within the Wenatshapam Fishery. The Ninth Circuit Court of Appeals engaged a factual inquiry into whether the constituent band of Colville "claiming treaty rights ha[d] maintained sufficient political continuity" with the Yakama Nation as to exercise a treaty right to the Fishery. *Id.* at 706. The Ninth Circuit honored the Yakama Nation's claims and concluded that the constituent band of Colville "had not maintained political cohesion with the [Yakama Nation that was] created by the 1855 treat[y]." *Id.* at 706 (quotations omitted). In its analysis, the Ninth Circuit examined the history of each band who sought to "trace their cultural and political lineage to" the Yakama Nation. *Id.* The Ninth Circuit determined that these lineal tribes, "prior to being subsumed by the Colville Confederacy, were separate bands who disengaged from the Yak[a]ma Nation by refusing to relocate to the reservation established" by our Treaty of 1855. *Id.* (emphasis added and quotations omitted).

Similar to our situation here, the Palouse of Colville disengaged from the Yakama Nation by refusing to relocate to our Reservation and later became subsumed by the Colville Confederacy. *See id.* To claim a right to develop a Casino Enterprise within the Yakama Nation's ceded territory, the Palouse of Colville must have "maintained sufficient political continuity with [the Yakama Nation] who signed the treaty [so] that it may fairly be called the same tribe." *Id.* The Palouse of Colville failed to maintain such continuity with the Yakama Nation.

In sum, Colville does not possess rights or the ability to develop a Casino Enterprise outside its 1872 Reservation boundaries. Colville failed to reserve its rights by a treaty with the United States. Colville preserved rights simply in the northern half of its 1872 Reservation through negotiations of an 1891 Agreement. Neither Colville nor a constituent band may lay claim to any right outside this area. Accordingly, there is no basis for Colville to now assert a claim to the Yakama Nation's ancestral territories within the Tri-Cities area.

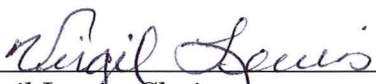
The Yakama Nation has lodged its standing objection to Colville, the Governor of Washington, the City of Kennewick, the City of Richland, the City of Pasco, Franklin County, and now the United States, its Bureau of Indian Affairs, and its Department of the Interior Secretary from taking any action towards acquiring Yakama Nation aboriginal lands in trust for the benefit of Colville.

The Federal Government possesses a fiduciary duty to the Yakama Nation pursuant our Treaty of 1855—a duty higher than one established by a mere Agreement. The Yakama Nation requests that the Federal Government uphold this trust responsibility and protect the Yakama Nation from the ensuing harm of Colville's wrongful attempt at this land

acquisition and Casino development. The Yakama Nation requests that the BIA deny Colville's attempt to colonize our homelands.

All Notices of Application or Decision, and any questions or concerns should be directed to Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 834-8005 or via email at Ethan@yakamanation-olc.org.

Respectfully,



Virgil Lewis, Chairman
Yakama Nation Tribal Council