

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,

Defendants,

and

JOSE TREVINO et al.,

Intervenor-Defendants.

Case No.: 3:22-cv-5035-RSL

**INTERVENOR-DEFENDANTS’
SUPPLEMENTAL FILING IDENTIFYING
YAKAMA NATION LANDS FILED AT
THE COURT’S REQUEST**

On February 9, 2024, the Parties participated in a hearing related to the Court’s ongoing process of determining a remedial State Legislative map to address its prior finding of Hispanic vote dilution in the Yakima Valley. At this hearing, the Court stated that the Parties should operate under the presumption that it will adopt Plaintiffs’ proposed Remedial Map 3A. Following the hearing, the Court issued an Order scheduling an evidentiary hearing for the remedial process to be held on March 8, 2024. *See* Dtk. # 266. The Court also ordered that the “Intervenor-Defendants shall identify the usual and accustomed hunting and fishing grounds of the Yakama Nation, off-reservation trust parcels, and/or traditional family homestead that they maintain are not included in LD-14 in Remedial Map 3A.” *Id.* The Court further ordered the Intervenor-Defendants to disclose “the data set from which the information is gleaned, screenshots of a map showing the excluded areas, and

1 the number of people impacted.” *Id.* What follows is Intervenor’s response to the Court’s order
2 discussed above.

3 **REQUESTED INFORMATION**

4 **A. Introduction**

5 After having retained a Special Master for the purpose of crafting a remedial map, and after
6 the Plaintiffs created and submitted the proposed remedial maps, the Court now orders Intervenor’s
7 to show the remedial map drawers where the lines should be placed to incorporate the Yakama
8 Nation in the manner they have repeatedly and publicly requested. As disclosed by the State
9 following the remedial oral argument, the Yakama Nation opposes all of the maps proposed by
10 Plaintiffs as “[n]one of [Plaintiffs’ proposed] remedial maps represent the Yakama Nation’s
11 interests to the same degree as the current 14th Legislative District that was a product of the
12 Yakama Nation’s active participation as a sovereign government in Consultative posture with the
13 Washington State Redistricting Commission.” Letter from Gerald Lewis, Chairman, Yakama
14 Nation Tribal Council, to Bob Ferguson, Attorney General of Washington (Dec. 22, 2023) (Ex.
15 A). In responding to the State’s blind support of Plaintiffs’ proposed remedial maps, the Yakama
16 Nation added: “it is improper for Washington State’s preferred solution to swap the injury through
17 revisions that dilute the Yakama voting population with the 14th Legislative District.” *Id.*

18 During the original map-drawing process, and during discovery and trial in this matter, the
19 members of the Commission all stated that one of their priorities was a map that gave the Yakama
20 Nation a single district that encompassed all of the land they felt should be included therein. *See,*
21 *e.g.*, Trial Tr. 486:5-23 (Fain: explaining why he prioritized tribal government interests, including
22 Yakama Nation’s “desire . . . to be consolidated” in a single legislative district); Trial Tr. 714:25-
23 715:16 (Graves: explaining that Commission’s final “framework” agreement reflected the Yakama
24 Nation’s “prefer[ence] to have both their reservation and their traditional hunting and fishing
25 lands[] be contained within one Legislative District”). The Yakama Nation had been very clear
26 with the Commission about what their tribe wanted. Under the Commission’s first-ever formal
27 tribal consultation process, the Yakama Nation made it abundantly clear—through numerous

1 letters, meetings, and presentations, all of which included maps and geographical descriptions—
 2 how they viewed the legislative district boundaries should be drawn around their lands. *See* Dkt.
 3 ## 252-4, 252-5, 252-6. All of these maps and presentations were produce to Plaintiffs during
 4 discovery and are part of the record before the Court (organized and attached as exhibits in a recent
 5 filing by Intervenors). *See id.* Despite the ample evidence on the record that shows *exactly* what
 6 the Yakama Nation wanted, Plaintiffs are still unable to produce a remedial map that “represent[s]
 7 the Yakama Nation’s interests to the same degree as the current 14th Legislative District,” Ex. A
 8 at 2—one that “is consistent with the Yakama Reservation boundary; incorporates Yakama
 9 members living in established tribal communities off-Reservation¹ and on federal trust property
 10 along the Columbia River; includes the Yakama Nation’s significant human service areas and
 11 public safety districts adjacent to the Reservation; and includes critical natural resource
 12 management areas for the protection of adjacent forests and rivers,” Letter from Delano Saluskin,
 13 Chairman, Yakama Nation Tribal Council, to Sarah Augustine, Chair, Washington State
 14 Redistricting Commission (Nov. 4, 2021) (Dkt. # 252-6 at 7-8). The Commission had little trouble
 15 understanding the Yakama’s political and cultural priorities and incorporating those priorities into
 16 the Enacted Plan, so it is troubling that Plaintiffs and the State have been unable to do the same,
 17 or to survey public records to answer the questions the Court now places before Intervenors.

18 **B. Reservation Lands**

19 This data is publicly available via the U.S. Census Bureau and is provided in the files
 20 transmitted to the Court.

21 **C. Usual and Accustomed Hunting and Fishing Grounds, Off-Reservation Trust Parcels, 22 and Traditional Family Homestead Lands**

23 As stated above, the Yakama Nation, throughout the map drawing process, provided
 24 numerous resources to assist the map drawers in crafting an appropriate district that encompassed

25 _____
 26 ¹ In an earlier letter to the Commission, the Yakama Nation wrote that “many enrolled members reside on off-
 27 Reservation trust parcels at traditional family homesteads, or in communities near the usual and accustom[ed] fishing
 sites along the Columbia River.” Letter from Delano Saluskin, Chairman, Yakama Nation Tribal Council, to Sarah
 Augustine, Chair, Washington State Redistricting Commission (Jun. 3, 2021) (Dkt. # 252-4 at 5).

1 all of the lands that the tribe hoped to be contained in a single legislative district. *See* Dkt. ##
2 252-4, 252-5, 252-6.

3 Except for off-reservation trust lands (which are relatively easy to track, because they are
4 held in trust by the United States), there are not always clearly delineated maps or lists of exact
5 parcels that contain all culturally-important off-reservation lands. *See supra* note 1 (identifying the
6 kinds of off-reservation areas important to the Yakama Nation). “To determine the existence of
7 original Indian title to land, and the right to hunt and fish following from that title, courts have
8 generally required a showing of actual use and occupancy over an extended period of time.”
9 *Washington v. Buchanan*, 978 P.2d 1070, 1079 (Wash. 1999). In fact, courts have not “provide[d]
10 a formal mechanism to evaluate and determine traditional hunting areas.” Washington State
11 Department of Fish & Wildlife, Treaty History With the Northwest Tribes,
12 <https://wdfw.wa.gov/hunting/management/tribal/history> (last visited Feb. 15, 2024). As such, the
13 best source to begin looking for an understanding of these off-reservation lands is to defer to the
14 Yakama Nation itself.

15 In fact, the Supreme Court has considered the 1855 treaty between the United States and
16 the Yakama Nation five times, “and each time it has stressed that the language of the treaty should
17 be understood as bearing the meaning that the Yakamas understood it to have in 1855.” *Wash.*
18 *State Dep’t of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000, 1011 (2019) (citing *United States*
19 *v. Winans*, 198 U.S. 371, 380-81 (1905), *Seufert Brothers Co. v. United States*, 249 U.S. 194,
20 196-98 (1919), *Tulee v. Washington*, 315 U.S. 681, 683-85 (1942), *Washington v. Wash. State*
21 *Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 677-78 (1979); *see also Choctaw*
22 *Nation v. Oklahoma*, 397 U.S. 620, 630-31 (“The Indian Nations did not seek out the United States
23 and agree upon an exchange of lands in an arm’s-length transaction. Rather, treaties were imposed
24 upon them and they had no choice but to consent. As a consequence, this Court has often held that
25 treaties with the Indians must be interpreted as they would have understood them.”).

26 The Yakama’s 1855 treaty ceded land extending westward “down the Columbia River to
27 midway between the mouths of White Salmon and Wind Rivers.” Treaty of 1855 With the

1 Yakama, Art. 1. Under the Enacted Plan, LD-14 extends down the Columbia to the White Salmon
2 River (which serves as the Klickitat-Skamania county line). Yet under Plaintiffs' proposal 3A,
3 LD-14 only extends downriver just past Lyle, well short of White Salmon.

4 In another example of the shortcomings of map 3A "Husum was a historic Yakama Nation
5 fishing village, and the Yakama Nation is highly involved in the protection and restoration of the
6 river." Wash. Dep't of Ecology, Quality Assurance Project Plan: White Salmon River Watershed
7 Bacteria Assessment, at 7 (<https://apps.ecology.wa.gov/publications/documents/2303103.pdf>).
8 The community of Husum is located in LD-14 under the Enacted Plan, but would be shifted to
9 LD-17, separate from the rest of the Yakama Nation, under Plaintiffs' proposal 3A.

10 In its various letters and presentations to the Commission, the Secretary of State and the
11 Attorney General of Washington, the Yakama Nation:

- 12 • Wrote that "many enrolled members reside on off-Reservation trust parcels, at
13 traditional family homesteads, or in communities near the usual and accustomed fishing
14 sites *along the Columbia River* . . . [there is also] indigenous voting population located
15 *south of the Yakama Reservation in Klickitat and Skamania Counties.*" Dkt. # 252-4 at
16 5.
- 17 • Presented historical and proposed legislative district maps to the Commission on
18 August 4, 2021. *See* Dkt. # 252-5 at 5, 7, 21.
- 19 • Supported Commissioner Graves's proposed legislative map because it "incorporates
20 Yakama members living in established tribal communities off-Reservation and on
21 federal trust property along the Columbia River; includes the Yakama Nation's
22 significant human service areas and public safety districts adjacent to the Reservation;
23 and includes critical natural resource management areas for the protection of adjacent
24 forests and rivers." Dkt. # 252-6 at 7-8.

25 Using the descriptions, comments, and maps provided by the Yakama Nation, Intervenor
26 have attempted to provide the information requested by the Court. The information will be
27 included in data files transmitted to the Court via email concurrent with this filing.

1 **CONCLUSION**

2 Based on recent comments from the Yakama Nation, it is clear that the tribe’s preference
3 is to simply maintain the current LD-14 District. None of Plaintiffs’ proposed remedial maps
4 provide the Yakama Nation with what it has requested (which is what it negotiated with the
5 Commission as sovereigns, pursuant to the Commission’s tribal consultation policy), including
6 Map 3A. Now that Intervenor’s are aware of the Yakama Nation’s position on the proposed
7 remedial maps through the letter recently provided by the State, *see* Ex. A, Intervenor’s intend to
8 put forth a proposed map that will maintain Yakama Nation’s position in the enacted LD-14 and
9 provide a majority-minority district for Latinos in the Yakama Valley that provides the opportunity
10 to regularly elect Democratic candidates. This map will be forthcoming with the remedial expert
11 filings and disclosures pursuant to the Order of the Court of February 9, 2024. *See* Dkt. # 266.

12 Here, there are few ways to create a map that contains a majority-minority Latino CVAP
13 that performs for Democratic-aligned candidates and gives the Yakama Nation everything they
14 requested. The Commission already dedicated several months’ worth of work to creating such a
15 map—to completely disregard the Commission’s work would be a travesty.

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1 DATED this 15th day of February, 2024.

2 Respectfully submitted,

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I certify that this memorandum contains 1,775 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court’s CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 15th day of February, 2024.

Respectfully submitted,

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