



YAKAMA NATION TESTIMONY
TO THE U.S. HOUSE OF REPRESENTATIVES APPROPRIATIONS SUBCOMMITTEE
FOR THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
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Provided by:
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Yakama Nation Tribal Council

Addressing The Following Agencies and Programs:
- Bureau of Indian Affairs
- Bureau of Indian Education

Chairman Simpson, Ranking Member Pingree and distinguished members of the House Appropriations Subcommittee on the Interior, Environment and Related Agencies, I submit this testimony on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”). The Yakama Nation is an inherently sovereign Native Nation with reserved rights and privileges pursuant the 1855 Treaty between the United States and the Yakamas (“Treaty”).¹ A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.² Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, Yakama Nation protects all of the natural and cultural resources in Yakama Nation’s Treaty-territory and provides for the health, safety, and welfare of the more than 11,000 enrolled Yakama Members. Pursuant the Treaty, statute, and trust status, the United States has a duty to provide for the public safety, resource protection, and human services set forth below.

I. Bureau of Indian Affairs (“BIA”).

The Yakama Nation carries out many federal trust functions through contracts issued by the United States pursuant to Public Law 93-638, Indian Self-Determination and Education Assistance Act (“ISDEAA”). Thus, “638ed” federal functions are administered by tribes under “638 Contracts”. A 638 Contract generally establishes an organizational framework and performance standards, and is *supposed* to provide the funding necessary for the contracted tribal department to perform the federal function – however, current funding levels are insufficient and **funding over the past decade has remained flat**, which is a decrease in the face of inflation. The Yakama Nation has been thrifty with available staff and budgets to ensure Yakama Members receive some measure of services owed to them by the United States. To avoid endangering public safety, health, and welfare, the Yakama Nation has also supplemented federal services with its own dollars to avoid any critical lapse in federal trust functions.

a. Necessary Public Safety & Law Enforcement Funding

The Yakama Nation has roughly a quarter of the officers needed to protect and serve the community that resides within the largest Treaty Reservation in Washington State.

The Yakama Nation protects its people and communities under a 638 Contract through the BIA, with oversight from the Interior’s Office of Justice Services (“OJS”). Guidance from the Federal Bureau of Investigation states we should have 2.3 police officers per 1,000 residents,

¹ See Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951.

² See U.S. Const. art. VI, cl. 2.

which is roughly 76 officers. The 638 Contract currently funds 20 patrol officers for the 1.4 million acre Yakama Reservation.

The Yakama Nation has experienced an increase in violent crime and property crimes, and has the highest occurrence of Missing and Murdered Indigenous Women/People in the region. The alarming rise in Latin American based gang and cartel-related drug activities is terrifying and the fentanyl epidemic plagues our Reservation communities. There are simply not enough law enforcement resources to meet our public safety needs. The Yakama Nation has collaborated with local municipal and county law enforcement agencies to create regional taskforce solutions and bring additional resources for the protection of Yakama and non-Yakama communities alike. Even that coalition-building is not enough; more police resources are needed.

The Yakama Nation Police Department needs more officers and more equipment. The region needs better public safety infrastructure to execute investigations and provide evidence for criminal prosecution. The federal 638 contract has been *flat* for the past two decades despite requests to OJS for any base increase, even to keep pace with inflation. The OJS has their hands tied by budgetary constraints. The Yakama Nation has had to figure out how to do more with less, year after year for decades. We need more law enforcement funding. We can no longer legitimately ask our People for patience when they reasonably demand public safety. We just recently had a meeting with our Police Chief, Yakama County's Sheriff and Congressman Dan Newhouse to discuss how the tribal and county jurisdictions could best coordinate as we have similar concerns. It was a great meeting but without funds, reaching multi-jurisdictional commitments for enhanced cooperation may not lead to much direct action.

b. Appraisal Backlog – ‘Cobell’ Part Two For Probate & Leasing

The Yakama Nation Appraisals Program lacks the required staff and funding levels to address the unwieldy and cascading appraisal backlog affecting the probate and leasing programs. The Yakama Nation Appraisals Program is 638 Contracted with the federal Appraisal and Valuation Services Office (“AVSO”). Appraisals are critical to probate and leasing. With probate, a value determination is made for a decedent's trust land. This valuation is necessary for courts to rule on a decedent's estate for inheritance decisions. An appraisal is also necessary to establish the lease rates for Tribal trust and allotment land. In the case of trespass, the appraised lease value will be assessed for damage. Timely appraisals are a federal fiduciary obligation.

Current funding levels only provide for a **single appraiser**. Given the volume of work, the Yakama Nation has hired consultants to assist with completing appraisals. But, regardless of supplemental staff support, the appraisal backlog accrues at a faster rate. The Yakama Nation has submitted mass appraisals based on regression modeling to the AVSO as a solution to this trust mismanagement, but the AVSO has inexplicably rejected all mass appraisals. Congress needs to provide authority for creative solutions like mass appraisals or funding for additional staff.

c. Forest Mismanagement – A Direct Federal Service

The Yakama Nation has a 650,000 acre forest, and last year the BIA **only completed one (1) timber sale**. Under the National Indian Forest Resource Management Act and implementing regulations, express trust duties were established for federal management of Indian forests. The BIA Forestry Program at the Yakama Agency has failed to hire many dozens of vacant forestry positions for more than a decade. In 2014, the BIA Director identified that BIA Forestry at the

Yakama Agency is, in his words, "on the verge of collapse." The program has only continued to deteriorate since then.

The Yakama Nation made the sovereign decision, and consistent with ISDEAA, for the U.S. to provide direct services through the BIA Forestry Program. Importantly, forestry management directly implicates Treaty-reserved rights and privileges. The BIA is functionally abrogating its direct services obligation through its gross mismanagement. The Forestry program has nearly stopped functioning altogether, and the U.S. is forcing the Yakama Nation to accept lost revenue through sheer neglect. This is a dramatic breach of the United States' trust obligations established by Treaty, statute, and regulation. Congress needs to fund maintenance and increased staffing consistent with the federal obligation.

Forest mismanagement has put Yakama Member-owned logging companies out of business. The Yakama Nation's commercial mill can no longer sustain itself on timber harvested from the Yakama Nation's own forest – threatening over 200 Yakama Member-held jobs. Yakama Members are losing the trust revenues that they should be receiving from a viable timber economy. This is an unconscionable failure for the U.S. to waste this timber resource through forest decay and wildfire. Increase the resources available to the BIA to ensure that federal direct service programs are able to meet federal obligations to the Yakama Nation.

d. Degraded In-Lieu and Treaty Fishing Access Sites

The federal management of In-Lieu and Treaty Fishing Access Sites (“Sites”) (*see* PL 116-99 and 25 CFR part 248) has been historically deplorable. More than \$40 million is needed to address the list of repairs that must be completed across various Sites to maintain public safety and access, including but not limited to: abandoned property removal; environmental cleanup of soils; restroom/shower restoration; safety fencing and gate installation and repair; access road repair; dock repair; site utility and water main improvements; and, wastewater treatment system repairs and septic drain field enhancements. To be clear, these are not simple fishing sites. These Sites host year-round residents including families and children.

The Yakama Nation has Treaty-reserved rights to fish the banks of the lower Columbia River at all usual and accustomed fishing areas. The U.S. broke this Treaty-promise with the construction of the Bonneville Dam (1938), the Dalles Dam (1957), and the John Day Dam (1971), each inundating traditional villages and countless usual and accustomed fishing places. In response to these Treaty-breaches the Site improvements were made “to provide access to usual and accustomed fishing areas and ancillary fishing facilities” for the Yakama Nation and its Members. Deterioration threatens continued access and safety at these 28 Sites.

Operation and maintenance of the 28 Sites is 638 Contracted with the Columbia River Inter-Tribal Fish Commission (“CRITFC”) to address infrastructure repairs, sanitation and safety needs, and property improvements. However, beyond minor repairs and improvements, the infrastructure needs listed above are unfunded. The Sites need improvements that cannot be addressed through the existing 638 Contract. Congress needs to provide for an annual base funding increase to support ongoing operation and improvement obligations.

e. Salmon Recovery & Treaty Resources

The Columbia River salmon fishery, Steelhead, Chinook, Sockeye, and Coho populations, are in jeopardy – for four decades the recovery funding has failed to keep pace with

the required mitigation for the salmon lost each year to the hydroelectric system. Fishery returns have never come close to the Northwest Electric Power and Conservation Planning Council (“NPCC”) goal of 5 million salmon returning each year, the hydroelectric system continues to kill 5 – 11 million salmon per year, and the federal government continues to fail its Treaty-obligation to the Yakama Nation for 50% of the Treaty-era fishery harvest.

The Yakama Nation’s 638 Contract funding levels for fish and wildlife programs need to increase above the rate of inflation to ensure protection of the Treaty-protected resources. Today, salmon are experiencing additional bellwether pressures from climate change, warmer water temperatures, and drought-level water levels in the rivers and streams. The Yakama Nation’s resource programs are regional leaders in hatchery management, habitat restoration, and fishery recovery, but even this tireless work cannot reverse the effects of the federal hydroelectric system’s annual unmitigated fish kill and its \$1 billion backlog in unfunded fish mitigation infrastructure, including but not limited to: hatchery projects; restoration work; and fish passage on the Columbia River and all of its tributaries. Congress needs a plan to fund the billion-dollar backlog so the next decade is an investment in keeping the United States’ Treaty-promises.

f. Water Resources

The BIA has systematically decreased its support for natural resource management; core functions such as water measurement, crop reporting, and Wapato Irrigation Project (“WIP”) maintenance have been underfunded to the point of system failure. The gross underfunding over the last 100 years has resulted in a shocking breach of the federal Trust responsibility.

The Yakama Nation is committed to water management and restoration of instream flows on the Yakama Reservation, including a conservation effort of 165,000 acre-feet of water through the modernization of WIP. The total price tag for modernization of WIP is between \$165 million and \$200 million dollars. Providing this and other natural resource funding is a step towards fulfilling the United States Government’s trust responsibilities.

II. Bureau of Indian Education (“BIE”).

The Yakama Nation Tribal School is a nearly 70-year old dilapidated facility and is evaluated in “poor” condition by the BIE’s Facility Condition Index, yet under the available and projected BIE construction funding, the timeline for a new school facility is waitlisted for 25 – 30 years. The Yakama Nation could build a new facility, using its own matching and state resources, with the federal sunk-cost maintenance funding necessary to prevent total failure of building systems while it languishes on a BIE building replacement list.

The Tribal School provides *I’ichiskin* Yakama language curriculum, along with tribal government and cultural studies for Yakama parents and students who want a culturally competent educational experience. The existing facility gets nearly half of its classroom space with ‘portable’ modularity. The maintenance needs just to keep the facility in use include repairs to electrical and fire systems, HVAC, lighting, intercom and security, and ADA access just to keep the existing building in service. The Yakama Nation cannot wait decades for a safe educational environment. The BIE school replacement funding needs a significant increase to address the more than 80 tribal schools ranked in ‘poor’ condition and authority needs to be provided so that the BIE can prioritize construction projects with matching funding, which will save money overall *and* redress this breach of duty faster.