Julio Carranza, WSBA #38211
Yakama Nation Office of Legal Counsel
401 Fort Road/P.O. Box 151
Toppenish, WA 98948
Telephone: (509) 865-7268

Gabriel S. Galanda, WSBA #30331
Anthony S. Broadman, WSBA #39508
Galanda Broadman, PLLC
4024B NE 95th Street/P.O. Box 15146
Seattle, WA 98115
Telephone: (206) 691-3631

Attorneys for Plaintiff Confederated Tribes and Bands of the Yakama Nation

The Honorable Edward F. Shea
Motion Date: August 30, 2010
Time: 9:00 a.m.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, a federally-recognized Indian tribal government and as *parens patriae* on behalf of the Enrolled Members of the Confederated Tribes and Bands of the Yakama Nation; FRIENDS OF THE COLUMBIA GORGE, an Oregon non-profit corporation; NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon non-profit corporation; COLUMBIA RIVERKEEPER, a Washington non-profit corporation; DAWN STOVER, a Washington resident; DANIEL

NO. CV-10-3050-EFS

REPLY MEMORANDUM IN SUPPORT OF CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION'S MOTION FOR PRELIMINARY INJUNCTION

**Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948**

LICHTENWALD, a Washington resident;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE; TOM VILSACK, Secretary of the United States Department of Agriculture; CINDY SMITH, Administrator of the United States Department of Agriculture Animal and Plant Health Inspection Service;

Defendants.

I. INTRODUCTION

This Court should issue a Preliminary Injunction preventing the shipment of any Hawaiian waste to the mainland United States pending final resolution of this lawsuit. Because Defendants failed to oppose the substantive grounds of Plaintiffs' Motion for Preliminary Injunction, the sole issue before the Court is whether Defendants have met their burden showing that every one of Plaintiffs' claims are moot. Defendants have not.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

As set forth below, none of Plaintiffs' claims are rendered moot by Defendants' voluntary termination of a Compliance Agreement (CA) with Hawaii Waste Systems. Nothing about the termination of the CA guarantees that Defendants will not issue another violative CA tomorrow. In fact, it appears the Court fully grasped this when issuing its Temporary Restraining Order and enjoining Defendants from authorizing Hawaii Waste Systems, **"or any other private waste hauling enterprise**" to ship garbage from Hawaii to the mainland United States. This Court's TRO rightly reflects the fact that Plaintiffs' claims are not confined by one "terminated" Compliance Agreement, with the current low-bid garbage hauler.

All issues in Plaintiffs' Complaint and Amended Complaint are unanswered, viable and should be adjudicated. If Defendants stated intent to revisit their deficient environmental and historical analyses is genuine, Defendants lack any compelling reason to oppose the issuance of a Preliminary Injunction. In fact, the opposition to an injunction raises the specter that additional Compliance Agreements may be at play here, through which the Defendants may intend to facilitate the shipment and dumping of Hawaiian waste on the United States mainland once the matter is no longer before this Court.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

Put simply, Plaintiffs have met their burden for issuance of Preliminary Injunction. Apart from the contention that Plaintiffs' claims are mooted by Defendants' voluntary action, Defendants do not raise objections or otherwise oppose any of the evidence and argument advanced in support of Plaintiffs' Motion for Preliminary Injunction. Thus, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Preliminary Injunction and enjoin Defendants from permitting the shipment of garbage from Hawaii to the mainland pending final resolution of this lawsuit.

II. AUTHORITY AND ARGUMENT

This Court should issue a Preliminary Injunction because Defendants (A) have failed to establish that Plaintiffs' claims are moot, and (B) do not dispute the evidence and argument set forth in Plaintiffs' Motion for Preliminary Injunction.

A. Defendants Fail To Meet Their Burden On The Sole Issue Before The Court: Whether Plaintiffs' Claims Are Mooted By The Termination Of The Compliance Agreement.

In their Opposition to Plaintiffs' Motion for Injunctive Relief (Dkt. # 57) Defendants rely entirely upon the argument that the termination of the Hawaiian Waste Systems CA excuses Defendants from answering for their violations of

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

federal law, and permits Defendants to escape this lawsuit with no consequences. Controlling law set forth below shows how Defendants' argument falls short.

The general rule is that a defendant's voluntary cessation of a violative action or course of action does not render a case moot.[1] When a defendant seeks to avoid an injunction by arguing that a plaintiff's claims are mooted by such voluntary cessation of action, the defendant must satisfy a "heavy burden"— part of which requires persuading "the court that the challenged conduct cannot reasonably be expected to start up again."[2] The Supreme Court held that despite any voluntary cessation of wrongdoing by defendants, trial courts must retain their "power to determine the legality of the practice."[3] Otherwise, trial courts would be forced to leave the defendant "free to return to his old ways."[4]

Instead, for a defendant to cease wrongdoing and establish that plaintiffs' claims are therefore moot, it must be "**absolutely clear that the allegedly**

---

[1] *Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 174 (2000).

[2] *Id.* at 189.

[3] *Id.*

[4] *Id.*

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

wrongful behavior could not reasonably be expected to recur."[5] Defendants have utterly failed to meet this threshold element of Defendants' burden on establishing mootness. Defendants have not even suggested that they will refrain from the illegal conduct that led to the CA, much less attempt to show that the termination of the CA guarantees proper conduct by the government moving forward. This void in Defendants' argument emphasizes why Defendants' argument fails and a Preliminary Injunction should issue.

Defendants' burden extends beyond proving - *with absolute clarity* - that Defendants' wrongful conduct cannot occur in the future. Even if Defendants had met this element, which they have not, Defendants must also show that rescinding the CA has "completely and irrevocably eradicated the effects of the alleged violation[s]."[6] As set forth in Plaintiffs' Complaint, Plaintiffs' claims reach far beyond the issuance of a defective CA to one garbage hauler. Plaintiffs' claims go to the heart of the matter – the deficient process undertaken by

---

[5] *Id.* (emphasis added).

[6] *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 853-54 (9th Cir. 1985), *quoting County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

Defendants that underlies the violative CA; namely, Defendants' deficient environmental assessments, their failure to comply with the National Historic Preservation Act (NHPA), and their failure to meaningfully consult with the Yakama Nation concerning its hunting, fishing, and gathering rights, in violation of, among other federal laws, the Treaty of 1855.

B. Plaintiffs' Claims Are Not Moot Because Defendants Have Failed To Address The Actual Violations Of NEPA Underlying The CA.

The Defendants do not dispute that they undertook a fundamentally flawed process resulting in a fundamentally flawed FONSI. Rather, Defendants falsely contend that the CA "was the only agency action Plaintiffs challenged in this case."[7] In fact, the Second Claim to Plaintiffs' lawsuit alleges: "Violation of NEPA – Invalid FONSI", and more specifically that:

> 2010 Site-Specific EA and FONSI, *and* the Compliance Agreements, **which are directly challenged in this Complaint**, were the culmination of Defendants' decision-making process that approved the creation of a new way for invasive species to enter the continental United States.[8]

Therefore, the question is whether Plaintiffs' claims under NEPA regarding the

[7] Dkt. # 57, 5.

[8] Dkt. # 1, 42:4; # 56, 42:4, 6-10, ¶ 72 (emphasis added).

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

United States' FONSI and its Site-Specific EA are moot because of the rescission of the CA. Contrary to Defendants' contentions otherwise, binding authority dictates that the "termination" of the CA does not moot Plaintiffs' claims.

The May 2010 FONSI issued by Defendants is a judicially reviewable action that Plaintiffs may challenge – and in fact have challenged. The Supreme Court has held that under NEPA, an interim action requiring another step before further harm may ensue is still judicially reviewable.[9] In the *Aberdeen* case, an across-the-board railroad rate hike was challenged on the premise that the hike would adversely impact the environment, contrary to the agency's conclusions resulting from its deficient process to assess environmental impact.[10] The agency had completed its NEPA review but had yet to hold the requisite hearings on the issue before the rate hikes could go into effect. Nevertheless, the Supreme Court held that because the agency had completed its consideration of environmental matters, that action was judicially reviewable:

---

[9] *Aberdeen & Rockfish Railroad v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 422 U.S. 289, 319 (1975).

[10] *Id.* at 304.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

> When agency or departmental consideration of environmental factors in connection with that 'federal action' is complete, notions of finality and exhaustion do not stand in the way of judicial review of the adequacy of such consideration, even though other aspects of the [action] are not ripe for review.[11]

The Supreme Court employs a two-prong test to determine whether an action is a final agency action for the purpose of bringing a suit under the APA.[12] First, the challenged action must mark the consummation of the agency's decision-making process. Second, the action must be one by which rights or obligations have been determined or from which legal consequences flow.[13] Because Defendants' 2010 FONSI represents the consummation of its consideration of environmental factors required under NEPA, the issuance of the FONSI itself constitutes a final agency action that is ripe for review, even in the absence of any compliance agreements authorizing shipment of Hawaiian garbage to the continental United States.

---

[11] *Id.* at 319.

[12] *Bennett v. Spear*, 520 U.S. 154 (1997).

[13] *Id.* at 177-78.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

The ongoing threat of irreparable harm in this context is the added risk of harm to the environment caused by the agency's failure to fully consider the consequences of dumping Hawaiian garbage on the Mainland as required under NEPA.[14] Given Defendants' issuance of a defective FONSI, Plaintiffs are injured by virtue of the risk posed by the FONSI, and will continue to face injury without injunctive relief.

The United States Court of Appeals for the Eighth Circuit has decided a case in a similar procedural posture. In *Sierra Club v. U.S. Army Corps of Engineers*, the plaintiffs sued because the Army Corps of Engineers failed to complete an EIS regarding the construction of a levee.[15] The Corps moved to dismiss, arguing there was no final agency action.[16] The Corps argued that it had not yet entered into any cooperation agreements for levee construction and lacked government funding to complete the project.[17] The Eighth Circuit disagreed,

---

[14] *See Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989).

[15] *Sierra Club v. U.S. Army Corps of Engineers*, 446 F.3d 808 (8th Cir. 2006).

[16] *Id.* at 811.

[17] *Id.* at 812.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

finding that "the Corps' issuance of an environmental assessment and a finding of no significant impact did constitute final agency action under NEPA," ***notwithstanding the requisite additional steps the Corps had to undertake before it could act***.[18]

The Eighth Circuit found that the FONSI was the conclusion of the Corps' NEPA decision-making process and, therefore, reviewable. Denying judicial review of the NEPA process the Corps undertook would, according to the Eighth Circuit, "undermine the purpose of judicial review under NEPA—to 'ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.'"[19] The Eighth Circuit's reasoning appears to be based on the Supreme Court's strong signal "that an agency's decision to issue either a FONSI or an environmental impact statement is a 'final agency action' permitting immediate judicial review under NEPA."[20]

---

[18] *Id.* at 811.

[19] *Id.* at 816.

[20] *Id.* at 815.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

Case law from the Ninth Circuit is in line with the Eighth Circuit's holding that the issuance of a FONSI is a final agency action, subject to judicial review.[21]

Defendants here imply that because a final small step must be taken before Hawaiian garbage may be shipped to and dumped on the United States mainland, this Court may not review Defendants' deeply flawed FONSI. The case law unequivocally establishes that Defendants may not use the procedural gimmick of terminating a CA when, for purposes of NEPA, the FONSI is a final agency action that has caused harm, and continues to threaten irreparable harm absent preliminary injunctive relief.

C. A Preliminary Injunction Should Issue Because Plaintiff Yakama Nation Continues To Face Imminent Threat Of Irreparable Harm.

Since Defendants have acted and continue to act in such a manner as to deny the Yakama Nation its rights, or ignore them altogether, this Court should

[21] *See ONRC v. Harrell*, 52 F.3d 1499, 1503 (9th Cir. 1995); *see also City of Las Vegas v. FAA*, 570 F.3d 1109, 1115 (9th Cir. 2009) ("Las Vegas . . . satisfies [the APA's] requirements, as the FONSI/ROD is a final agency action that adversely affects Las Vegas, and the city alleges a concrete injury to its interests in the environment and in safety which falls within the zone of interests of NEPA.").

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

issue a preliminary injunction.[22] Indeed Defendants' conduct since the Court's ruling on the Nation's first injunction motion only highlights the need for preliminary protection against an agency that refuses to satisfy its consultation obligations: Defendants have not even provided the Nation with the official document suspending the CA. Nor have Defendants provided such documentation to the Court under cover of the declaration of Ms. Bech. Accordingly, the Nation may only assume that the official suspension of the CA is inconsistent with the position Defendants have taken before the Court.

Defendants further imply that the termination of the CA "means that Plaintiffs cannot establish any imminent irreparable harm."[23] Defendants terminated the CA, in a thinly veiled admission that the Defendants failed to follow the consultation requirements of Section 106 of the NHPA. "APHIS has decided to conduct further analysis under the National Historic Preservation Act

---

[22] *Yankton Sioux Tribe v. Kempthorne*, 442 F.Supp.2d 774 (D.S.D. 2006) (issuing an injunction against BIA action where the tribe was not adequately consulted in compliance with federal regulations).

[23] Dkt. #57, 7:11-13.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

(NHPA), *one of the statutes* under which Plaintiffs bring their claims in this case," according to Defendants,[24] "in order to allow APHIS the opportunity to incorporate any relevant information that may be learned from the additional NHPA analysis into its decision making."[25] Therefore, Defendants conclude, Plaintiffs will suffer "no prejudice by being forced to wait for review until the agency reconsiders its decision."[26] Defendants, however, fail, or refuse, to address their obdurate abrogation of the Yakama Nation's rights under the statutes asserted in this case, particularly the Treaty With the Yakama of 1855, 12 Stat. 951.

This Court has already found that Plaintiff Yakama Nation is likely to suffer irreparable harm in the absence of an injunction that enjoins the shipment of Hawaiian garbage to "the area in which tribal members exercise their 'in common' hunting, gathering, and fishing rights protected by the 1855 Treaty."[27]

---

[24] Dkt. #57, 5:17-19.

[25] Bech Decl., ¶ 5.

[26] Dkt. #57, 4:16-18.

[27] Dkt. #33, 4:3-7.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

In so ruling, the Court questioned "whether the USDA adequately consulted with the Tribe" pursuant to various federal laws, which, in addition to the NHPA, require Defendants to meaningfully consult with the Yakama Nation.[28] Although Defendants now issue a vague statement that they will "conduct further analysis regarding the compliance agreements pursuant to the [NHPA]," Defendants refuse to commit to consultation with Yakama pursuant to the various other federal laws under which the Nation has asserted claims in this case.[29]

Defendants' continued refusal to consult with the Yakama Nation about the "immeasurable harm" posed to Yakama Treaty-protected resources and waterways by an invasive species or contamination from Hawaiian garbage is, in and of itself, an imminent and continuing irreparable violation of the Yakama Treaty and federal trust responsibility owed to Yakama Indians.

---

[28] *Id.*, 4:1-2.

[29] Particularly, the Treaty With the Yakama of 1855, 12 Stat. 951; United States Presidential Executive Orders, Nos. 13175, 13,007, and 12,898; NEPA regulations, 40 CFR §§ 1501.2 and 1508.8, 1508.27; and Defendant APHIS' own Directive 1040.1.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

The Supreme Court has held that the United States has a fiduciary duty and "moral obligations of the highest responsibility and trust" to protect the Indians' treaty rights.[30] "In practical terms, a procedural duty has arisen from the trust relationship such that the federal government must consult with an Indian Tribe in the decision-making process to avoid adverse effects on treaty resources."[31] Defendants have already irreparably violated, and threaten continued imminent irreparable violation of, the United States' duty to consult with Yakama.

---

[30] *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942), *cited in Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1510-11 (W.D. Wash. 1988) (preliminary injunction issued against the United States to prohibit the construction of a marina on usual and accustomed Indian fishing place).

[31] *Klamath Tribes v. U.S.*, 1996 WL 924509, at *8 (D. Or. 1996), *See also Midwater Trawlers Cooperative vs. United States Dept. of Commerce*, 139 F.Supp.2d 1136, 1145 (W.D. Wash. 2000) ("That the federal government may consult with the Tribes over the application of their treaty rights is well-grounded in the government's trust relationship with the tribes."), *aff'd in part, rev'd in part on other grounds* 282 F.3d 710 (9th Cir. 2002).

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

Importantly, Defendants' consultation obligations under the NHPA are unique and distinct from its consultation obligations pursuant to, *inter alia*, NEPA, the Yakama Treaty and federal common law trust responsibility.[32] As such, Defendants' implicit admission that they failed to consult with Yakama pursuant to Section 106 of the NHPA, and vague statement that Defendants' will undertake "additional NHPA analysis,"[33] do not relieve Defendants of their obligation to adequately consult with the Yakama Nation pursuant to various other federal laws, most notably the Yakama Treaty of 1855.

The United States Constitution dictates that the Treaty is "the supreme Law of the Land; and the Judges in every State shall be bound thereby . . ."[34] A

---

[32] *See San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1097 (9th Cir. 2005) ("What § 106 of NHPA does for sites of historical import, NEPA does for our natural environment."); *United States v. 0.95 Acres of Land*, 994 F.2d 696, 698 (9th Cir. 1993) ("NHPA is similar to NEPA except that it requires consideration of historic sites, rather than the environment.").

[33] Dkt. #58, 2:22 – 3:1.

[34] U.S. Const. Art. VI, Cl. 2.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

violation or loss of rights guaranteed by Treaty and protected under the Constitution is considered "irreparable in the equitable sense."[35] Indian Treaty rights are unique and damages sustained by Treaty Indians are generally insusceptible of monetary determination.[36] Indeed, as this Court has already concluded: "The introduction of an invasive species or contamination by the Hawaiian garbage would immeasurably harm the resources and waterways enjoyed by tribal members . . . as well as the Tribe's logging industry."[37] Defendants' undisputed violation of both the federal trust responsibility owed to the Yakama Indians, and the Yakama Treaty is irreparable harm.

Further, "[i]t is the threat of irreparable harm that provides the situation its

---

[35] *Muckleshoot Indian Tribe*, 698 F.Supp. at 1516, *citing Los Angeles Memorial Coliseum v. National Football League*, 634 F.3d 1197, 1202 (9th Cir. 1980).

[36] *United States v. Washington*, 384 F.Supp. 312, 404 (W.D.Wash. 1974), *aff'd* 520 F.2d 676 (9thCir. 1975), *cert. denied*, 423 U.S. 1096, *substantially aff'd sub nom. Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).

[37] Dkt. #33, 4:7-11.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

urgency."[38] "Simply stated, the threat of irreparable harm renders the situation urgent because it means a party is in danger of losing something irretrievable."[39] This situation remains urgent because Yakama is in danger of losing something irretrievable: federal stewardship of, and respect for, the rights and procedural duties guaranteed to Yakama Indians pursuant to the supreme Law of the Land – the Yakama Treaty of 1855. Moreover, the threat of grave and irreparable harm posed by the Defendants' continuing conduct extends to threaten the Yakama People's fundamental rights, their values, and their way of life since time immemorial. Accordingly, a preliminary injunction should issue.[40]

III. CONCLUSION

Defendants failed to oppose any of the substantive grounds underpinning Plaintiffs' Motion for Preliminary Injunction. Instead, Defendants rely

---

[38] *Ford Motor Company v. Todecheene*, 221 F.Supp.2d 1070, 1088 (9th Cir. 2002*), citing Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

[39] *Id., citing* 11 A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2918.1 p. 139 (2d ed. 1995).

[40] *Yankton Sioux Tribe*, *supra*.

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

exclusively on the position that the termination of a Compliance Agreement renders the Motion for Preliminary Injunction moot. As established above, Defendants' position is fatally flawed. Plaintiffs have met their burden in establishing the requisite elements for the issuance of a Preliminary Injunction. The termination of the CA does not obviate the grave threat lying at the heart of this matter – the potential for environmental disaster enabled by the Defendants multifaceted failures to execute their duties, and the potential for an irreparable abrogation of the Yakama Nation's Treaty of 1855.

//

//

//

//

//

//

//

//

//

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

Therefore, Plaintiffs respectfully request this Court grant Plaintiffs' Motion for Preliminary Injunction and enjoin Defendants from permitting the shipment of garbage from Hawaii to the United States mainland pending final resolution of this lawsuit.

DATED this 20th day of August, 2010.

s/ Julio Carranza, WSBA #3821
Julio Carranza, WSBA #38211
Attorney for Confederated Tribes and Bands of the Yakama Nation
Office of Legal Counsel
YAKAMA NATION
401 Fort Road/P.O. Box 151
Toppenish, WA 98948
(509) 865-7268 Fax: (509) 865-4713
Email: julio@yakamanation-olc.org

s/Gabriel S. Galanda, WSBA# 30331
Gabriel S. Galanda, WSBA# 30331
Anthony S. Broadman, WSBA #39508
Galanda Broadman PLLC
4024B NE 95th Street
P.O. Box 15146
Seattle, WA 98115
(206) 691-3631 Fax: (206) 299-7690
Email: gabe@galandabroadman.com
Email: anthony@galandabroadman.com

Attorneys for Confederated Tribes and Bands of the Yakama Nation

CERTIFICATE OF SERVICE

I, Julio Carranza, say:

1. I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

2. On August 20, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification via e-mail to:

Pamela De Rusha
United States Attorney's Office
E-mail : Pamela.derusha@usdoj.gov

And to :

Tyler Bair
United States Department of Justice
E-mail: tyler.bair@usdoj.gov

//

//

//

//

Yakama Nation
Office of Legal Counsel
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

//

DATED this 20th day of August, 2010.

s/ Julio Carranza, WSBA #3821
Julio Carranza, WSBA #38211
Attorney for Confederated Tribes and Bands of the Yakama Nation
Office of Legal Counsel
YAKAMA NATION
401 Fort Road/P.O. Box 151
Toppenish, WA 98948
(509) 865-7268 Fax: (509) 865-4713
Email: julio@yakamanation-olc.org