

IN THE TRIBAL COURT
FOR THE CONFEDERATED TRIBES AND BANDS OF
THE YAKAMA NATION

CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION, a federally-
recognized Indian tribe,

Plaintiff,

v.

ALAN HAIGHT, Director of the Washington
State Department of Licensing;
WASHINGTON STATE DEPARTMENT OF
LICENSING; CHRISTINE GREGOIRE,
Governor of the State of Washington;
STATE OF WASHINGTON;

Defendants.

NO. R-13-019

ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

Appearing before the Court on December 6, 2012 is Plaintiff Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")'s, represented by Co-Counsels, Gabe Galanda and Anthony Broadman, filing a Motion for Temporary Restraining Order. Appearing by telephone for Defendants, Alan Haight, Director of Licensing, State of Washington and Christine Gregoire, Governor, State of Washington, is Bill Clark, making a special appearance for the purpose of lodging an objection to the Yakama Tribal Court's jurisdiction over this matter.

Plaintiff provided advance notice of the hearing to Defendant on December 5, 2012.

1 Having reviewed the submitted material and relevant authority and having
2 heard oral argument, the Court is informed. As explained below, the temporary
3 restraining order is **GRANTED** against Defendants.

1 This Court first finds that it has jurisdiction over the Defendants for the following
2 independent bases:

3 1. This civil action arises under the Revised Yakama Law and Order Code
4 (RYC); Defendants have been initially provided with Plaintiff's Complaint and Motion
5 papers. See RYC § 2.01.03(2). "The Yakama Nation shall have original jurisdiction
6 over. (2) All civil actions arising under this Code, or a Tribal law, in which the
7 defendant is found within the territorial limits of the Yakama Nation and is served with
8 process or who is found outside of the territorial limits of the Yakama Nation and who
9 is validly served with process as provided in this Code."

10 2. Defendants entered the exterior boundaries of the territorial limits of the
11 Yakama Nation. RYC § 2.01.03(2).

12 3. This civil action stems from Yakama territory. RYC § 2.01.03(4). "The
13 Yakama Nation shall have original jurisdiction over. (4) All territory, including but not
14 limited to lands, waters, roadways, trails within the Yakama Reservation, as
15 established by the Treaty of 1855, supra, and all territory made a part of the Yakama
16 Reservation by Executive Order No. 11670 of May 20, 1972; Act of December 21,
17 1904, (33 Stat. 595), or any other Acts of Congress, Executive Orders or Federal
18 Court decisions adding lands to the territory of the Yakama Reservation and also
19 extra-territorial jurisdiction for the purpose of protecting the rights of the Yakama
20 Nation guaranteed by the Treaty of June 9, 1855,....."

21 4. This civil action seeks to protect the rights of the Yakama Nation as
22 guaranteed by the Treaty With The Yakamas, 12 Stat. 951 (1859). RYC § 2.01.03(4).

23 5. Article II of the Treaty With The Yakamas recognizes the Yakama
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1 Nation's authority to exclude, and therefore regulate, non-Indian entities on Yakama
2 trust lands.

3 6. The Yakama Nation also has the inherent sovereign power to exclude,
4 and therefore regulate, non-Indian entities on tribal trust land.

5 7. The Yakama Nation has inherent authority over members and non-Tribal
6 members who through their "presence, business dealings, other actions or failure to
7 act or other significant contacts with the Yakama Reservation and/or its residents . . .
8 incur civil obligations to persons or entities entitled to the Tribe's protection." RYC §
9 1.01.01.

10 8. Here, the civil obligations incurred by Defendants arose, and continue to
11 arise, on Yakama Reservation trust land; sustained interaction between the Yakama
12 Nation and Defendants occurred on Yakama Reservation trust land; the subject matter
13 of the civil obligations incurred is located on Yakama Reservation trust land; and the
14 economic, spiritual, social, cultural, and political impacts of the violations of those civil
15 obligations occurred, and continue to occur, on Yakama Reservation trust land.

16 9. The Yakama Nation also has the inherent sovereign power to regulate
17 disputes arising out of a non-member entity's consensual relationship with the
18 Yakama Nation, as well as those disputes that directly affect the Yakama Nation's
19 political integrity, economic security, health, or welfare.

20 10. Here, the dispute at issue arose out of a consensual relationship with the
21 Yakama Nation, the contract sought to be enforced. Considering the subject matter
22 thereof, Defendant's breach of that contract directly affects the Yakama Nation's
23 political integrity, economic security, health, and welfare.

1 The Court finds that a Temporary Restraining Order must issue in order to
2 maintain the *status quo*, as the Plaintiff is likely to succeed on the merits of its claim
3 that Defendants have breached the "good faith" mediation requirements of the parties'
4 Consent Decree (*Teo v. Steffenson*, No. 04-3079 (E.D. Wash. Aug. 21, 2006), ECF
5 No. 66) ("Consent Decree"))¹; that Plaintiff is likely to suffer irreparable harm as a
6 result of that breach, in the absence of preliminary injunctive relief; that the balance of
7 equities tips in Plaintiff's favor; and that an injunction is in the public interest. *Cf.* RYC
8 § 7.01.01. The Court finds that this standard is met, as follows:

9 1. Paragraph 4.7.d of that Consent Decree requires the parties to mediate
10 "in mutual good faith on a government to government basis . . . until the dispute is
11 resolved or until the mediator determines that the parties are not able to resolve the
12 dispute." Consent Decree, at ¶¶ 4.2, 4.7.c-d. There are serious questions relating to
13 whether Defendants mediated with Plaintiff in good faith since March 2012, or since
14 allowed the mediator to determine that the parties are unable to resolve their stated
15 differences under Consent Decree. Indeed, it initially appears that: (a) Defendants
16 have not mediated in good faith since March 2012; (b) the mediator did not find that
17 the parties are unable to resolve their stated dispute; and (c) the mediator did not
18 declare impasse. As such, the Court finds that Plaintiff will likely prevail on its claim
19 that Defendants breached, *inter alia*, Paragraph 4.7.d of that Consent Decree.

20 2. Further, the Court finds that Plaintiff is likely to suffer irreparable harm in
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22 ¹ "Consent Decree" shall herein also include any still applicable terms of that certain
23 Consent Decree initially entered by the U.S. District Court for the Eastern District of
24 Washington on November 2, 1994 in *Teo v. Steffenson*, No. 93-3050.

1 the absence of a temporary injunction that enjoins Defendants from taking any further
2 action to "terminate" the Consent Decree or to otherwise ignore the provisions of that
3 contract. Again, the Consent Decree requires that the parties mediate "in mutual good
4 faith on a government to government basis . . . until the dispute is resolved or until the
5 mediator determines that the parties are not able to resolve the dispute." Consent
6 Decree, at ¶¶ 4.2, 4.7.c-d. The Court is persuaded by the authorities cited by Plaintiff
7 that a breach of the terms of a Consent Decree, particularly such mediation contract
8 language, and especially one bargained for between sovereigns, constitutes
9 irreparable harm.

10 3. In addition, the Court finds that the balance of equities tips in favor of
11 Plaintiff, and that a temporary injunction is in the public interest. Both parties have an
12 admitted interest in "in mutual good faith" mediation "on a government to government
13 basis." Consent Decree, at ¶ 4.2. This Court recognizes that both the Yakama tribal
14 members and the Washington state public, too, have interests in alternative dispute
15 resolution and in enforcing government-to-government mediation agreements. Breach
16 of the Consent Decree's mediation requirement, which could catapult the parties into
17 complex tax and Treaty rights litigation, costing both sovereign governments
18 enormous amounts of money at a time when economies are struggling to rebound
19 from recession and citizens are experiencing historic high rates of unemployment.
20 Abandoning mediation for the more exhausting and expensive litigation would be
21 detrimental to those publics. Further, it appears that pending mediation, the State has
22 received, and will continue to receive, 100% of its fuel taxes, which militates against
23 any finding of detriment to the State or its citizenry. Consent Decree, at ¶ 2.3; see
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1 also Declaration of Chairman Harry Smiskin, ¶ 4. There is nothing compelling before
2 the Court to suggest that good faith mediation and any correlating stay or delay of
3 litigation would harm the public interest.

4 Accordingly, the Court determines that Plaintiff has established the necessity of
5 a temporary restraining order and, therefore, Plaintiff's Motion for Temporary
6 Restraining Order is **GRANTED** as follows:

7 The Court hereby **ADOPTS** as a matter of comity those mediation provisions of
8 the Consent Decree, *inter alia*, Paragraphs 4.2 and 4.7.c-d, as entered by the U.S.
9 District Court for the Eastern District of Washington in *Teo v. Steffenson*, No. 04-3079
10 (E.D. Wash. Aug. 21, 2006), ECF No. 66. See RYC § 27.01, *et seq.*

11 Until the Court rules on a motion for preliminary injunction, Defendants are
12 **ENJOINED** from taking any further action to "terminate" the Consent Decree or
13 otherwise ignore the provisions of that contract. Defendants are **ORDERED** to refrain
14 from any action frustrating or impeding the performance of the obligations set forth in
15 the Consent Decree. The *status quo* shall otherwise prevail under the Consent
16 Decree.

17 A preliminary injunction hearing is **SET** for January 17, 2013 at 9:00 AM. The
18 parties shall appear for that hearing in person. The parties may file motion, response
19 and reply papers regarding a preliminary injunction; if no such filings are made, the
20 Court will treat the existing filings as preliminary injunction papers.

21 Defendants, their officers, agents, servants, employees, and attorneys, are
22 hereby **ORDERED** to resume mediation in accordance with the terms of the parties'
23 Consent Decree. The parties shall continue to mediate, **in good faith**, either until the
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1 dispute is resolved or until **the mediator** formally determines that the parties are not
2 able to resolve their stated differences under Consent Decree. The parties shall abide
3 by the direction of the mediator as to the mediation process.

4 Plaintiff shall post a \$100.00 bond by no later than December 10, 2012.

5 This Order is intended to be reciprocally afforded comity or full faith and credit,
6 as applicable, by the Courts of the United States, Washington State, or any other
7 state, insofar as the Yakama Uniform Enforcement of Foreign Judgment Act affords
8 comity and full faith and credit to a decree or order of such Courts. RYC § 27.01, *et*
9 *seq.*

10 **IT IS SO ORDERED.** The Court Clerk is directed to immediately file this Order
11 and provide copies of this Order to counsel.

12 DATED this 6th day of December 2012.

13 
14 Chief Judge

