

1 KATHRYN KENEALLY
2 Assistant Attorney General

3 W. CARL HANKLA
4 Trial Attorney
5 U.S. Department of Justice, Tax Division
6 P.O. Box 683
7 Washington, DC 20044
8 Telephone (202) 307-6448
9 w.carl.hankla@usdoj.gov
10 *Attorneys for Defendant*

11 MICHAEL C. ORMSBY
12 United States Attorney
13 *Of Counsel*

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON
16

17 THE CONFEDERATED TRIBES AND
18 BANDS OF THE YAKAMA INDIAN
19 NATION,

20 Plaintiff,

21 v.

22 ALCOHOL AND TOBACCO TAX
23 AND TRADE BUREAU, et al.,

24 Defendants.

Civil No. CV-11-3038-RMP

**UNITED STATES’
MOTION FOR SUMMARY
JUDGMENT**

**With Oral Argument
December 4, 2013
9:00 a.m., Yakima**

Introduction

25 This case presents the claim of the plaintiff, The Confederated Tribes and
26 Bands of the Yakama Indian Nation (“Yakama Nation”), that King Mountain
U.S.’ MOTION FOR SUMMARY
JUDGMENT

1 Tobacco Co., Inc. (“King Mountain”), which manufactures cigarettes and roll-
2 your-own tobacco in its facilities on the Yakama Reservation, is exempt from
3 the federal excise tax that applies to all other manufacturers. The Yakama
4 Nation also seeks a declaration that it is entitled to a face-to-face meeting with
5 the President to negotiate a resolution. The United States of America, which is
6 the true defendant, denies that the Yakama Nation is entitled to any relief as a
7 matter of law.
8
9

10 **Motion**

11
12 The United States hereby moves for summary judgment under Rule 56(a)
13 of the Federal Rules of Civil Procedure and Local Rules 7.1 and 56.1 as to all
14 claims remaining for decision. There are no genuine issues of material fact, and,
15 in light of the Court’s previous rulings as contained in its Order Denying
16 Plaintiffs’ Motion to Strike and Granting in Part and Denying in Part
17 Defendants’ Motion to Dismiss (ECF Doc. 83), its Order Denying Plaintiff’s
18 Motion for Partial Summary Judgment (ECF Doc. 103), and its Order Denying
19 Plaintiff’s Motion to Amend Order and Stay Proceedings (ECF Doc. 121), the
20 United States is entitled to a judgment dismissing this action as a matter of law.
21
22
23
24
25
26

Statement of Facts

These facts are reprinted for convenience of reference from the Statement of Facts filed herewith under Local Rule 56.1. The Court has found that these facts “are not in dispute.” ECF Doc. 103 at 1.

1. The Yakama Nation is a federally recognized Indian tribe.

2. King Mountain is a corporation organized, existing, and operating under the laws of the Yakama Nation.

3. Delbert Wheeler, Sr., is an enrolled member of the Yakama Nation and is the owner and operator of King Mountain.

4. King Mountain’s manufacturing facilities are located within the boundaries of the Yakama Nation Reservation on property held in trust by the United States for the beneficial use of Mr. Wheeler.

5. Some of the tobacco used by King Mountain is grown on Yakama Nation trust land. The trust-land grown tobacco is then blended with other tobacco to produce King Mountain products.

Issues Presented

1. Whether the Court has already ruled that the Yakama Nation cannot prevail on its claims under the General Allotment Act and Article II of the Treaty—no matter how much of King Mountain’s tobacco is grown on the Reservation.

2. Whether Ramsey forecloses the Yakama Nation's claim under Article III of the Treaty.
3. Whether the Yakama Nation's claim under Section 4225 of the Internal Revenue Code fails based on the plain language of the statute.
4. Whether the Yakama Nation's claim to a face-to-face meeting with the President lacks any support in the Treaty or Minutes, or in the Executive Order and Presidential Memoranda at issue.

Argument

1. **The Court has already ruled that the Yakama Nation cannot prevail on its claims under the General Allotment Act and Article II of the Treaty—no matter how much of King Mountain's tobacco is grown on the Reservation.**

The Yakama Nation's primary claims have already been effectively denied. The Court, at page 2 of its Order Denying Plaintiff's Motion to Amend Order and Stay Proceedings, ECF Doc. 121, "rejected the Yakama Nation's arguments that imposition of a tobacco excise tax on a tobacco company owned and operated by an enrolled member of the Yakama Nation on Yakama Nation trust land that incorporated trust-land grown tobacco into its products violated the General Allotment Act and [Article II of] the Treaty of 1855." The Court noted that when it denied the plaintiff's motion for partial summary judgment on those claims (ECF Doc. 103), it "functionally resolved a subset of the Yakama Nation's claims in this action." ECF Doc. 121 at 2. In other words, the United States is entitled to a judgment of dismissal as to those claims. This would

1 remain true even if all of King Mountain's tobacco came from trust land, as
2 explained below.

3
4 *General Allotment Act*

5 In rejecting the Yakama Nation's General Allotment Act claim, the Court
6 relied on Squire v. Capoeman, 351 U.S. 1 (1956). ECF Doc. 103 at 5-11.

7
8 Capoeman held that a tribal member was not liable for federal income tax on the
9 proceeds of timber harvested from his allotted trust land. *Id.* The General
10 Allotment Act promised that the allotted land eventually would be transferred to
11 the allottee free from any encumbrance. *Id.* Unpaid taxes, though, would give
12 rise to a tax lien or encumbrance against the land. *Id.* Accordingly, to prevent a
13 tax lien from arising, all income "directly" from the allotted land, such as capital
14 gains from the sale of timber, was exempt from tax. *Id.* Compare Dillon v.
15
16 United States, 792 F.2d 849 (9th Cir. 1986) (income from smokeshop located on
17 reservation land in Washington state was not tax-free because it was not
18 generated principally and directly from the land; it was more akin to
19 reinvestment income); Hale v. United States, 579 F.Supp. 646 (E.D. Wash.
20 1984) (landlord's income from allotted land leased to smokeshop tenant was not
21 exempt under the Act because such income was not directly derived from the
22 land).
23
24
25
26

1 This Court, after assuming that the Capoeman rule could apply to excise
2 taxes as well as income taxes (a view the United States does not share, since
3 excise taxes apply to activities, not to income; *see* U.S.' Memorandum, ECF
4 Doc. 94 at 8), held that Capoeman provided no exemption from federal tobacco
5 excise tax because King Mountain's products were not "directly" and
6 "principally" derived from trust land. ECF Doc. 103 at 9 (discussing Dillon v.
7 United States, 792 F.2d 849 (9th Cir. 1986)). The Court reasoned that the excise
8 tax statute "does not tax Mr. Wheeler or King Mountain for growing tobacco."
9 ECF Doc. 103 at 8. "Instead, King Mountain is taxed [under section 5701 of the
10 Internal Revenue Code] because it manufactured cigarettes and roll-your-own
11 tobacco in the United States." *Id.* That some of the tobacco in King Mountain's
12 products comes from allotted land was not material: "The fact that King
13 Mountain included trust-grown tobacco into its products does not change the
14 scope of the excise tax." *Id.*

15
16
17
18
19
20 When the Court entered ECF Doc. 103, the evidence before it was that
21 King Mountain's products contained 20 percent trust-grown tobacco. *Id.* at 9.
22 The Yakama Nation is expected to argue that the percentage is currently much
23 higher. This is not material, though.
24
25
26

1 Even if 100 percent of King Mountain's tobacco came from allotted land,
2 the result would be the same. King Mountain's cigarettes and roll-your-own
3 tobacco would still not be "directly" from the land; rather, those products would
4 come from "reinvestment income" (ECF Doc. 103 at 8), as the Court has already
5 decided:
6

7
8 The Court in Capoeman drew a distinction between income derived
9 directly from trust land and income derived from previous income, which
10 the Court called reinvestment income. 351 U.S. at 9. Direct income was
11 not taxable while reinvestment income was taxable. *Id.* Even though this
12 case involves an excise tax instead of an income tax, the Court finds this
13 distinction relevant.

14 [King Mountain's] finished cigarettes and roll-your-own tobacco
15 are . . . products derived from a product directly derived from the land.
16 The cigarettes and roll-your-own tobacco are not directly derived from
17 trust land for purposes of Capoeman, and application of the excise tax to
18 the cigarettes and roll-your-own tobacco is permissible.

19 *See also* Matter of Cabazon Indian Casino, 57 B.R. 398 (9th Cir. BAP 1986)
20 (tribal casino located on reservation land was not exempt from federal gambling
21 excise tax under Capoeman because the tax was not directly on the land).

22 Thus under Capoeman it is a necessary condition that the income be
23 directly from allotted land in order to be eligible for an exemption from federal
24 tax. Satisfaction of that direct condition is not sufficient because the income
25 must also be principally from the land. *See* ECF Doc. 103 at 9. "[E]ven where
26 some value comes directly from trust land, the Capoeman rule should not apply

1 in cases where ‘income was not generated principally from the use of
2 reservation land and resources.’” *Id.* (quoting Dillon, 792 F.2d at 855-56). The
3 Court proceeded to rule that King Mountain’s products were not “principally”
4 from trust land because, among other things, only 20 percent of the tobacco was
5 grown on the Yakama Reservation. *Id.* In the United States’ view, this latter
6 ruling was not necessary to the Court’s decision because the Capoeman
7 exception requires the taxpayer to meet both the “directly” and the “principally”
8 test, and the Court had already determined that King Mountain’s manufactured
9 products, being the fruit of reinvestment income, could not be “directly” from
10 the land. The Court did not even need to reach the “principally” issue because
11 the Yakama Nation had not satisfied the threshold “directly” requirement.
12

13
14
15
16 Additionally, as the Court observed, any tax exemption under Capoeman
17 would apply only with respect to the allottee-taxpayer’s own land, based on the
18 Ninth Circuit’s decision in United States v. Anderson, 625 F.2d 910, 914 (9th
19 Cir. 1980). *See* ECF Doc. 103 at 10-11. Here, Delbert Wheeler is the allottee
20 and King Mountain is the taxpayer. Taxes incurred by King Mountain would
21 not give rise to a lien against Wheeler’s land unless an alter ego/nominee
22 relationship were proven, and no evidence of such a relationship has been
23 offered. *Id.* “Therefore, under the reasoning of *Anderson*, the *Capoeman*
24
25
26

1 exception to taxation would not apply to income earned by King Mountain.” *Id.*
2 at 11.

3
4 *Article II of Treaty*

5 The Yakama Nation claims an exemption from federal tax under Article II
6 of the Treaty, which in relevant part established the Reservation for the
7 “exclusive use and benefit” of the Yakama Nation. In determining whether
8 Article II provided such an exemption, the Court first looked to Ramsey v.
9 United States, 302 F.3d 1074 (9th Cir. 2002). ECF Doc. 103 at 11. The Court
10 noted that when state tax law is at issue, the Treaty “must be interpreted in the
11 light most favorable to the Indians, and extrinsic evidence may be used to show
12 the federal government’s and Indians’ intent.” *Id.* at 13, quoting 302 F.3d at
13 1079. But when federal tax law is at issue, a different approach is required. *Id.*
14 The court’s duty is to look first at the treaty itself to see if it contains any
15 “express exemptive language.” *Id.* If it does not, the inquiry ends without
16 reaching the Indian canons of construction or considering extrinsic evidence:
17
18
19
20

21 [W]here federal tax law is at issue, a court must first determine
22 whether the treaty contains “express exemptive language.” *Id.* at 1078.
23 Only if the treaty contains express exemptive language does the court
24 proceed to determine whether that language could be reasonably
25 construed to support exemption from taxation. *Id.* at 1079. The question
26 before this Court, then, is whether Article II contains express exemptive
language. In making this inquiry, the Court will not consider evidence
extrinsic to the Treaty itself.

1 *Id.*

2 The Court looked also to Hoptowit v. Commissioner, 709 F.2d 564 (9th
3
4 Cir. 1983), which applied the General Allotment Act/Capoeman analysis to an
5 Article II exemption claim. ECF Doc. 103 at 13. Hoptowit concluded that “any
6 tax exemption created by this language [in Article II] is limited to the income
7
8 derived directly from the land.” *Id.* at 14. The income at issue there was not
9 derived directly from the land but from a smokeshop located on the land, so it
10 was not exempt. *Id.*

11
12 The Court then repeated its previous ruling that since the excise tax at
13 issue in this case is not imposed on products directly derived from allotted land,
14 no exemption can arise:

15
16 This Court already has held that King Mountain does not enjoy an
17 exemption from the federal excise tax on tobacco products under
18 Capoeman because the tax is not imposed on products directly derived
19 from the land. Therefore, to the degree that Article II contains express
20 exemptive language, the exemption to taxation created by Article II would
21 not apply to the facts of this case. *Id.* Accordingly, the Plaintiff has failed
22 to establish an exemption to the excise tax under the Treaty.

23 ECF Doc. 103 at 14-15.

24 The Court concluded by denying the Yakama Nation’s motion for partial
25 summary judgment:

26 Enrolled members of federally recognized Indian tribes, as United
States citizens, are subject to federal taxation unless explicitly exempted

U.S.’ MOTION FOR SUMMARY
JUDGMENT

1 under federal law or by treaty. Fry v. United States, 557 F.2d 646, 647
2 (9th Cir. 1977). King Mountain is not exempt from federal excise tax on
3 tobacco products under the General Allotment Act and Capoeman
4 because the excise tax does not tax products directly derived from the
5 land. Any exception to taxation that could be inferred in Article II of the
6 Treaty is similarly limited to products derived directly from the land.
7 Hoptowit, 709 F.2d at 566. Therefore, the excise tax also is not precluded
8 by the Treaty.

9 ECF Doc. 103 at 14-15. In short, the Court reasoned that since no exemption
10 applies under Capoeman, none applies under Article II.

11 Although the Court assumed in ECF Doc. 103 that Article II might
12 contain express exemptive language (“to the degree that Article II contains
13 express exemptive language . . .”), the United States contends that it is clear that
14 no such language actually appears in Article II. In Hoptowit v. Commissioner,
15 78 T.C. 137 (1982), *aff’d*, 709 F.2d 564 (9th Cir. 1983), the Tax Court rejected
16 the claim of a member of the Yakama Nation that he was entitled to an
17 exemption from federal income tax based on Article II’s exclusive-use-and-
18 benefit language:
19

20 The treaty nowhere expressly deals with the question of taxation of
21 the tribe or its members [W]e do not think it can be read to exempt
22 the income of a member of the tribe from Federal taxation.

23 78 T.C. at 143. The Tax Court cited United States v. Farris, 624 F.2d 890, 893
24 (9th Cir. 1980), which noted “that general treaty language such as that devoting
25 land to a tribe’s ‘exclusive use’ is not sufficient to exempt Indians from Federal
26

U.S.’ MOTION FOR SUMMARY
JUDGMENT

1 laws of general applicability.” Farris concluded that the “exclusive use” clause
2 of the Medicine Creek Treaty was not specific enough to preempt a federal
3 gambling excise tax. 624 F.2d at 893. Farris and Hoptowit reinforce the
4 Court’s conclusion that Article II provides King Mountain with no exemption
5 from federal tax.
6

7
8 **2. Ramsey forecloses the Yakama Nation from prevailing on its
9 claim under Article III of the Treaty.**

10 The Court has not in previous orders ruled whether Article III of the
11 Treaty exempts King Mountain from excise tax. It hardly needed to. In
12 Ramsey, the Ninth Circuit made it clear that Article III’s travel-and-trade clause
13 lacks any “express exemptive language.” Article III therefore cannot provide
14 any exemption from federal excise tax as a matter of law.
15

16 This conclusion is clear from a review of Ramsey. Kip Ramsey, an
17 enrolled member of the Yakama Nation, did business as a sole proprietor,
18 logging timber on tractor-trailers from the reservation to market. 302 F.3d at
19 1076. He claimed he was exempt from federal excise taxes on highway use and
20 diesel fuel, relying on Article III, paragraph 1 of the Treaty:
21
22

23 [I]f necessary for the public convenience, roads may be run
24 throughout the reservation; and on the other hand, the right of way, with
25 free access from the same to the nearest public highway, is secured to
26 them; as also the right in common with the citizens of the United States,
to travel upon all public highways.

U.S.’ MOTION FOR SUMMARY
JUDGMENT

1 *Id.* Ramsey argued that he should prevail based on Cree v. Flores, 157 F.3d 762
2 (9th Cir. 1998), where his logging company won an exemption from Washington
3 state highway-related taxes under the Treaty. *Id.* at 1077. As to that state tax
4 exemption claim, Cree held that the Treaty should be construed as the Yakama
5 would have understood its terms in 1855. *Id.*

6
7
8 On cross-motions for summary judgment, the district court ruled for
9 Ramsey, concluding that the Cree analysis was applicable to federal taxes as
10 well as state taxes. Ramsey, 134 F.Supp.2d at 1204, 1207-09. The Ninth
11 Circuit reversed. Ramsey, 302 F.3d at 1080.

12
13 Agreeing with the government, the Ninth Circuit held that the Cree
14 analysis was inapplicable because a different, more exacting standard applied to
15 a claim to an exemption from federal tax as opposed to state tax:
16

17 The applicability of a federal tax to Indians depends on whether
18 express exemptive language exists within the text of the statute or treaty.
19 The language need not explicitly state that Indians are exempt from the
20 specific tax at issue; it must only provide evidence of the federal
21 government's intent to exempt Indians from taxation. Treaty language
22 such as "free from incumbrance," "free from taxation," and "free from
fees," are but some examples of express exemptive language required to
find Indians exempt from federal tax.

23 302 F.3d at 1078-79. Under this federal standard, the "canon of construction
24 favoring Indians" does not come into play unless the court first finds "express
25

26 U.S.' MOTION FOR SUMMARY
JUDGMENT

1 exemptive language” within the four corners of the treaty. *Id.* at 1079. By this
2 standard, the Treaty contained no possible tax exemption:
3

4 The Treaty simply states that “free access from the [reservation] to
5 the nearest public highway, is secured to [the Yakama Nation]; as also the
6 right, in common with the citizens of the United States, to travel upon all
7 public highways.” 12 Stat. at 953. This provision does not provide
8 express language from which we can discern an intent to exempt the
9 Yakama from federal heavy vehicle and diesel fuel taxation.

10 *Id.* at 1080. The Ninth Circuit remanded for entry of summary judgment in
11 favor of the United States. *Id.*

12 Granted, the Ninth Circuit’s standard is more restrictive than that of the
13 Third Circuit and the Eighth Circuit. *Compare Lazore v. Commissioner*, 11
14 F.3d 1180, 1185 (3rd Cir. 1993) (to support an exemption from federal tax,
15 Indian treaty need not contain a “definitely expressed exemption”; instead,
16 treaty must contain language that “can reasonably be construed to confer [the
17 claimed tax exemptions]”); *Holt v. Commissioner*, 364 F.2d 38, 40 (8th Cir.
18 1966) (to the same effect). Yet the United States would prevail even under this
19 less restrictive standard because the Treaty contains no language that reasonably
20 can be construed to confer an exemption from the federal tobacco
21 manufacturer’s excise tax.
22
23
24
25
26

U.S.’ MOTION FOR SUMMARY
JUDGMENT

1 Consequently, the Yakama Nation's exemption claim in this case under
2 Article III must fail for the same reason that Ramsey's claim failed—the lack of
3 express exemptive language.
4

5 **3. The Yakama Nation's claim under Section 4225 of the Internal**
6 **Revenue Code must fail based on the plain language of the**
7 **statute.**

8 Internal Revenue Code section 4225's limited exemption for American
9 Indian handicrafts does not by its terms apply to the tobacco manufacturer's
10 taxes at issue, notwithstanding the allegations of the Amended Complaint to the
11 contrary. The face of the statute rules out any other conclusion. Section 4225,
12 "Exemption of Articles Manufactured or Produced by Indians," states:
13

14 No tax shall be imposed under this chapter on any article of native
15 Indian handicraft manufactured or produced by Indians on Indian
16 reservations, or in Indian schools, or by Indians under the jurisdiction of
17 the United States Government in Alaska.

18 26 U.S.C. § 4225. The referenced chapter is Chapter 32, "Manufacturers Excise
19 Taxes." Chapter 32 contains taxes on sporting goods such as bows and arrows,
20 that is, traditional Indian handicrafts. 26 U.S.C. § 4161(b). King Mountain's
21 products are not Indian handicrafts. Plus, the tobacco excise tax, 26 U.S.C. §
22 5701, is not in Chapter 32. It is in Chapter 52, "Tobacco Products and Cigarette
23 Papers and Tubes." Section 4225 cannot exempt King Mountain from Chapter
24 52 taxes.
25

26 U.S.' MOTION FOR SUMMARY
JUDGMENT

1 **4. The Yakama Nation's claim to a face-to-face meeting with the**
2 **President lacks any support in the Treaty and Minutes, or in**
3 **the Executive Order and Presidential Memoranda at issue.**

4 The Yakama Nation's request to meet directly with the President and his
5 staff—a request allegedly supported by the Treaty and its Minutes and by an
6 Executive Order and two Presidential Memoranda—cannot be maintained.

7 The Yakama Nation asks this Court to declare that President Obama and
8 his Indian affairs experts must negotiate with its representatives face-to-face to
9 work out a satisfactory solution to King Mountain's tax problem. Specifically,
10 the Yakama Nation claims that it is entitled to “meaningful consultation and
11 resolution without threats of litigation, prosecution, or legal proceedings.” ECF
12 Doc. 16 at 53. The Treaty cannot support this claim. It contains no language
13 from which a right to such a meeting can be based. And the Yakama Nation
14 does not even rely on the Treaty itself but on the Minutes: the Court observed in
15 ECF Doc. 83 that the Yakama Nation's “argument is born of alleged oral
16 promises during treaty negotiations that the tribal elders would be able to speak
17 with the ‘Great Chief.’” ECF Doc. 83 at 3, n.1.

18 However, the Minutes contain no oral promises by the President's agents
19 that the Yakamas would be able to meet directly with the President to resolve
20 any disputes under the Treaty. The Minutes show that communications with the
21 U.S.’ MOTION FOR SUMMARY
22 JUDGMENT

1 President regarding the Treaty would take place through his authorized agents or
2 in writing. *See* Minutes, ECF Doc. 16-1, at 29, 40. The Minutes leave no room
3 for reasonable doubt.
4

5 Just as the Treaty and Minutes provide no basis for a face-to-face meeting
6 with the President, the Executive Order and Memoranda cited by the Yakama
7 Nation provide no basis, either, because they contain no language that can be
8 reasonably construed to give King Mountain a right of consultation before
9 normal tax assessment and collection activity by TTB. And assuming solely for
10 the sake of argument that such a right could be found in the subject Executive
11 Order or Memoranda, King Mountain could not compel the Executive Branch to
12 negotiate a satisfactory resolution.
13
14
15

16 As a general rule, private parties may not enforce executive orders. Chai
17 v. Carroll, 48 F.3d 1331, 1339 (4th Cir. 1995); Zhang v. Slattery, 55 F.3d 732,
18 747-48 (2d Cir. 1995). Executive orders are generally viewed “as a managerial
19 tool for implementing the President's personal economic policies and not as a
20 legal framework enforceable by private civil action.” Independent Meat Packers
21 Ass'n v. Butz, 526 F.2d 228, 236 (8th Cir. 1975). In no event is an executive
22 order judicially reviewable if it expressly disclaims a private right of action.
23
24
25

26 U.S.' MOTION FOR SUMMARY
JUDGMENT

1 City of Carmel-by-the-Sea v. United States Dep't of Transp., 123 F.3d 1142,
2 1166 (9th Cir. 1997).

3
4 The Executive Order and Memoranda contain express disclaimers.
5 President Clinton's Executive Order 13175, Fed. Reg. vol. 65, no. 218, Nov. 9,
6 2000, "Consultation and Coordination with Indian Tribal Governments,"
7
8 specifically precludes any private right of action:

9 Sec. 10. Judicial Review. This order is intended only to improve
10 the internal management of the executive branch, and it not intended to
11 create any right, benefit, or trust responsibility, substantive or procedural,
12 enforceable at law by a party against the United States, its agencies, or
any person.

13 This Executive Order was preceded by President Clinton's May 4, 1994
14 memorandum on the same subject, "Memorandum on Government-to-
15 Government Relations with Native American Tribal Governments," which
16 contained a substantially identical disclaimer. Similarly, President Obama's
17 "Memorandum for the Heads of Executive Departments and Agencies, Subject:
18 Tribal Consultation," dated Nov. 5, 2009, which implemented President
19 Clinton's Executive Order, contains an express disclaimer of any private right of
20
21 action.
22

23
24 It follows that the Yakama Nation's claim for an audience with the
25 President must fail as a matter of law.

26 U.S.' MOTION FOR SUMMARY
JUDGMENT

1 At any rate, representatives of the Executive Branch have in fact met with
2 representatives of the Yakama Nation and King Mountain to discuss Treaty-
3 related issues. The meeting took place in Washington, D.C. in 2010. ECF Doc.
4 16 at 17. The government participants included the President's Senior Policy
5 Advisor on Native American Affairs, the Director of the Office of
6 Intergovernmental Affairs, the head of the Bureau of Indian Affairs, an Assistant
7 Secretary of the Interior, and the Deputy Director of the Justice Department's
8 Office of Tribal Justice. *Id.* King Mountain asked for a meeting with high-level
9 Executive Branch officials, and it got one. King Mountain's concerns were
10 heard.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

U.S.' MOTION FOR SUMMARY
JUDGMENT

Conclusion

Based on the foregoing and on the rest of the record herein, there is no genuine issue of material fact and the United States is entitled as a matter of law to summary judgment dismissing the remaining claims in this action.

DATED this 1st day of October, 2013.

KATHRYN KENEALLY
Assistant Attorney General

/s/ W. Carl Hankla
W. CARL HANKLA
Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 683
Washington, DC 20044
Telephone (202) 307-6448
w.carl.hankla@usdoj.gov
Attorneys for Defendant

MICHAEL C. ORMSBY
United States Attorney
Of Counsel

U.S.' MOTION FOR SUMMARY
JUDGMENT

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

JOHN ADAMS MOORE, JR.
Adam Moore Law Firm
217 N. Second St.
Yakima, WA 98901
mooreadamlawoffice@qwestoffice.net

RANDOLPH H. BARNHOUSE
Luebben Johnson & Barnhouse LLP
7424 4th Street NW
Los Ranchos de Albuquerque, NM 87107
Telephone (505) 842-6123
dbarnhouse@luebbenlaw.com

/s/ W. Carl Hankla
W. CARL HANKLA
Trial Attorney
U.S. Department of Justice

U.S.' MOTION FOR SUMMARY
JUDGMENT